72-1316

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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1972

No. 72-1316

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service Employees of Escambia County, Florida,
Petitioner,

versus

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM M. CHISOLM, WILLIAM G. CHAMPLIN, I. S. POWELL J. L. TAYLOR, and TED CIANO, as members of the Civil Service Board of Escambia County, Florida; and CARL H. HARPER, County Solicitor of Escambia County, Florida,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER Term, 1972

NO.

JAMES RUSSELL SWINNEY, III, individually and on behalf, of a class of persons known as the Civil Service Employees of Escambia County, Florida,

Petitioner

v.

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM M. CHISOLM, WILLIAM G. CHAMPLIN, I.S. POWELL J. L. TAYLOR, and TED CIANO, as members of the Civil Service Board of Escambia County, Florida; and CARL H. HARPER, County Solicitor of Escambia County, Florida

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

James Russell Swinney, III, and twenty other Petitioners, pray that a writ of certiorari issue to review the judgment of the Supreme Court of Florida, entered in this case on January 22, 1973, which became final after denial of petition for rehearing on February 28, 1973.

OPINIONS BELOW

Petitioner, James Russell Swinney, III, and twenty other persons holding offices or places in the classified service under the Civil Service Act of Escambia County seek relief from a final judgment of the Supreme Court of Florida entered on January 22, 1973, affirming a judgment by the Honorable William Frye, III, of the Circuit Court of Escambia County entered on July 17, 1972. The opinion of the Florida Supreme Court rendered on the constitutionality of §§ 23 and 18 of the Escambia County Civil Service Act (Chapter 67-1370, Laws of Florida) is reported at 272 So.2d 805. A copy of this opinion is attached to this petition as Exhibit 5 of the Appendix to the petition (infra pp. A-55 - A-69). The opinion of the Circuit Court rendered at prior stages of the present proceeding is not reported. A copy of this opinion is attached to this petition as Exhibit 3 of the Appendix to the petition (infra pp. A-45 - A-50).

JURISDICTION

The final judgment of the Supreme Court of Florida affirming the decision of the Circuit Court of Escambia County was rendered January 22, 1973. The denial of the petition for rehearing was dated February 28, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3).

ISSUES PRESENTED FOR REVIEW

1. Whether § 23, Chapter 67-1370 Laws of Florida 1967, an act establishing the Escambia County Civil Service System, violates the First, Fifth, and Fourteenth Amendments to the Constitution of the United States.

2. Whether the actions of the Escambia County Civil Service Board have a chilling effect upon freedom of speech and association and constitute an unlawful restrain upon political freedom within the meaning of Sweezy v. New Hampshire, 354 U.S. 234, 1 L.Ed. 2d 1311, 77 S.Ct. 1203 (1957).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the First, Fifth, and Fourteenth Amendments to the Constitution of the United States, and the provisions of § 23, Chapter 67-1370, Laws of Florida 1967, are set forth as Exhibit 1 of the Appendix to the petition (infra pp. A-1 A-4) attached hereto.

STATEMENT OF THE CASE

James Russell Swinney, III, and twenty other persons individually and on behalf of the class of persons known as the Civil Service Employees of Escambia County, Florida, on May 16, 1972, filed a civil complaint against Royal J. Untreiner, Sheriff of Escambia County, Florida, the members of the Civil Service Board of Escambia County, Florida, and Carl H. Harper, then County Solicitor of Escambia County, Florida, to prevent these Defendants from taking any criminal or civil action against them for activities proscribed in § 23 of the Civil Service Act of Escambia County, Florida, Chapter 67-1370, Laws of Florida 1967. Nineteen of the Plaintiff-Petitioners including Swinney were employees of the Defendant Sheriff as deputy sheriffs with varous titles of motorcyclist, sergeant, or investigator. Another of the Petitioners is a custodial foreman employed by the Escambia County School Board, and the remaining Petitioner

is a special investigator attached to the Public Defender's Office. Each Petitioner had filed an affidavit announcing his intention to take an active part in James Russell Swinney, III's political campaign to be elected to the Florida Legislature, or on behalf of Governor George Wallace's campaign for the Presidency of the United States, or on his own or others behalf in the Florida Legislature. At the time of filing, each was afraid, and each continues to be afraid to take any part in any political campaign because he might be dismissed by the Civil Service Board. No one now fears criminal prosecution for violation of the Civil Service Act, but that was not the case before suit. Each desired and continues to desire allegedly in the sworn complaint to assist in favoring or opposing candidates for the Presidency of the United States, Florida Legislature, and County elective offices including the Sheriff's office by doing the following in that election year: running for public office, taking an active part in political campaigns, serving as members of a committee of a political club, circulating and seeking signatures to petition, and distributing badges, color, buttons, or other indicia favoring candidates for elective offices in federal, state, county, and municipal elections.

Petitioners also sought to be permitted to take an active part in political management or in political campaigns including candidacy for or service as a delegate or alternate to a political convention; to take a prominent role in any political convention including making speeches and preparing resolutions; to prepare for a political rally and to address the meeting on any partisan political matter; to become a member in political clubs without compensation; to distribute campaign literature and to wear badges;

to publish or to have an editorial or managerial role with a partisan newspaper, and to be permitted to write articles or letters, except that the public employee would not make reference to his government employment; to organize and to participate in any political parade; and to initiate or to sign nominating petitions on behalf of a partisan candidate.

At that time, each was afraid and at the present time each remains afraid to perform any of the acts recited because each stands to lose his job. Swinney was suspended from his job as deputy sheriff after he presented himself to the people as a candidate for the Legislature and the Escambia County Civil Service Board ordered his dismissal. Each Plaintiff-Petitioner alleged that he is suppressed and that a chilling effect has been wrought upon each because he is unable to exercise his constitutional right to perform each and every act recited herein because it is prohibited by § 23 of the Civil Service Act. In this complaint Plaintiff-Petitioners filed on May 16, 1972, they sought declaratory and injunctive relief alleging that §§ 23 and 18 of the Civil Service Act of Escambia County, Florida, and corresponding Rules 23.1 and 18.1 of the Rules and Regulations of the Escambia County Civil Service Board for the Administration of the Civil Service Act, were unconstitutional for reasons of vagueness, overbreadth, for denying equal protection of the law, denying due process of law, and denying substantive due process of law, all in violation of Plaintiff-Petitioners' First, Fifth, and Fourteenth Amendment rights under the Constitution of the United States. The Plaintiff-Petitioners alleged under oath that the Defendants had threatened to invoke the

sanctions provided for in the Rules. Plaintiff-Petitioners requested that the court declare the Act and the Rules unconstitutional, invalid, void, and in addition, to permanently enjoin each and every Defendant from enforcing or threatening to enforce the punitive provisions of the Rules.

The trial court's order dated June 1, 1972, declared § 18, Chapter 67-1370, unconstitutional and this Section is no longer in dispute.

On July 17, 1972, the Escambia County Circuit Court held § 23 constitutional and not in controvention of the Florida and United States Constitutions. Plaintiff-Petitioners had alleged violations only of the Constitution of the United States in their complaint and sought to raise that Constitution's provisions only.

A timely appeal to the Supreme Court of Florida was entered. Assignments of error were filed the following day, July 18, 1972, designating as one of the rrors that the court erred in holding § 23 constitutional and not in controvention of any provision of the Constitution of the United States. The Supreme Court of Florida upheld the Circuit Court decision in an opinion dated January 22, 1973. In essence, the Supreme Court of Florida held § 23 valid in light of United Public Workers v. Mitchell, 330 U.S. 75 (1947) and State of Oklahoma v. U.S. Civil Service, 330 U.S. 127 (1947) up-holding the constitutionality of the Hatch Act. The Supreme Court of Florida took no affirmitive action, expressly announcing that this is a matter for the state and federal legislatures. Since this opinion spoke in terms of both federal and state constitutional grounds with no apparent lines of delination

of what is state constitutional grounds and what is federal constitutional grounds, Plaintiff-Petitioners filed a petition for rehearing asking for clarity on the selection of constitutional grounds. The petition was filed timely and denied February 28, 1973. The Plaintiff-Petitioner Swinney is presently suspended, dismissed, and without employment.

All Plaintiff-Petitioners seek declaratory and injunctive relief.

REASONS FOR GRANTING THE WRIT

This case challenges the constitutionality of § 23 of the Civil Service Act of Escambia County, Florida, which prohibits covered employees from seeking elective office; serving in any elective or appointive position in any political party; taking an active part in any political campaign; serving as an officer or as a member of a committee of any political club or organization; circulating or seeking signatures to any petition provided for in any primary or election law; acting as a worker at the polls and distributing badges, colors, or indicia favoring or opposing a candidate for election or nomination to a federal, state, county or municipal office. These prohibitions, as written and as applied to Petitioners, are unconstitutionally overbroad, unconstitutionally discriminatory, unconstitutionally vague, are not supported by a compelling governmental interest, exert a chilling effect on the exercise of fundamental rights, are violative of due process and equal protection principals, and unconstitutionally demand a surrender of constitutional rights as payment for the provilege of public employment, all in violation of the First, Fifth, and Fourteenth Amendments of the Constitution of

the United States. The Florida Supreme Court has decided a substantial federal constitutional question not heretofore determined by this Court in light of the recent immense doctrinal development concerning the regulation of fundamental liberties protected by the First and Fifth Amendments of the Constitution of the United States and made applicable to the states by the Fourteenth Amendment. The Florida Supreme Court decision is not in accord in principle with applicable decisions of this Court.

It is unquestioned that § 23 imposes restrictions upon public employees which substantially affect their rights as citizens. The provision does not directly prohibit a person from engaging in proscribed political activities, but he may do so only at the penalty of losing his employment and attendant benefits. Although one does not have a constitutional right to such employment in public service, it is settled that a person cannot properly be barred or removed from public employment arbitrarily or in disregard of his constitutional rights. See Cramp v. Board of Pub. Inst., Orange County, Florida, 368 U.S. 278, 7 L.Ed. 2d 285, 82 S.Ct. 275 (1961); Torcaso v. Watkins, 367 U.S. 488, 6 L.Ed.2d 982, 81 S.Ct. 1680 (1961); Wieman v. Updegraff, 344 U.S.183, 97 L.Ed. 216, 73 S.Ct. 215 (1952); Sherbert v. Verner, 374 U.S. 398, 10 L.Ed.2d 965,83 S.Ct. 1790 (1963).

Participation in political activities is an integral part of United States citizenship. Our form of democratic government is built on the premises that every and each citizen shall have the right to engage in political expression and association. It has become known as a fundamental principle of a democratic society and was enshrined and insured by the First Amendment of the

Constitution of the United States. See New York Times Co. v. Sullivan, 376 U.S. 254, 11 L.Ed.2d 286, 84 S.Ct. 710 (1964); Sweezy v. New Hampshire, 354 U.S. 234, 1 L.Ed.2d 1311, 77 S.Ct. 1203 (1957).

The political activity provisions of § 23 deprive Petitioners as well as thousands of other county employees of fundamental rights protected by the First Amendment. The restrictions, although seemingly quite precise, are framed in broad terms and cover a wide range of activities such as running for any public office, campaigning either for oneself or for another, discussing political issues and candidates, and attending and participating in political meetings. The restriction is also of sufficient breadth to apply to political activity concerning all propositions on a ballot, including measures which would directly and personally affect an employee such as that relating to one's own salary or working conditions. Because of the broad and general terms of the restrictions, such as "no person . . .shall take an active part in any political campaign," it is not clear what additional conduct is proscribed, for example, placing bumper stickers on automobiles, wearing lapel buttons promoting your candidate, or working at a campaign headquarters on off-duty hours. The only express limitation on these sweeping restrictions is contained in the phrase ". . . from enjoying entire freedom from all interference in casting his vote."

The prohibitions of political activity of § 23 of the Civil Service Act of Escambia County were upheld by the Florida Supreme Court against challenges under the First, Fifth, and Fourteenth Amendments of the Constitution of the United States by their bottoming the upholding upon the United

States Supreme Court decision in United Public Workers v. Mitchell, 330 U.S. 75, 91 L.Ed. 754, 67 S.Ct. 556 (1947). There a bare majority of a divided court upheld the validity of the Harch Act, the federal counterpart of § 23 of the Civil Service Act of Escambia County, Florida.

Since 1947, numerous state courts including the Florida Supreme Court have upheld "little Hatch Acts" against federal constitutional challenges, all in reliance on Mitchell, supra.

Petitioners feel that these courts have misconstrued and misinterpreted the immense doctrinal development concerning the regulation of the fundamental liberties protected by the First and Fifth Amendments which have been uncovered since 1947. These courts have failed to give adequate weight to the interests of the very large and rapidly growing portion of the responsible and knowledgeable national as well as state and local electorate which finds itself classified as political eunuchs, sterilized from common political privileges by Harch Acts, big or little. These interests are of an entirely different order than they were when Mitchell, supra, was decided. The reasoning of the majority opinion in Mitchell, supra, was that of manifest deference to legislative judgment in an area involving fundamental liberties, and to the discredited theory of McAuliffe v. Mayor of New Bedford, 155 Mass 216, 29 N.E. 517 (1897), that a person may be compelled to surrender his constitutional rights as a condition of obtaining government employment. The Mitchell, supra, majority confined itself to a narrow consideration of the plaintiff before the court, and refused to even give cursory consideration to the

breadth, imprecision, and vagueness of the statutory language concerned.

The United States Supreme Court has often recognized the fundamental nature of the right to free political activity. See Monitor Patriot Co. v. Roy, 401 U.S. 265, 28 L.Ed. 2d 35, 91 S. Ct. 62 (1971); Mills v. Alabama, 384 U.S. 214, 16 L.Ed.2d 484, 86 S.Ct. 1434 (1966); Garrison v. Louisiana, 379 U.S. 64, 13 L.Ed.2d 125, 85 S.Ct. 209 (1964); NAACP v. Button, 371 U.S. 415, 9 L.Ed.2d 405, 83 S.Ct. 328 (1963); Edwards v. South Carolina, 372 U.S. 229, 9 L.Ed.2d 697, 83 S.Ct. 680 (1963); Woods v. Georgia, 370 U.S. 375, 8 L.Ed.2d 569, 82 S.Ct. 1364 (1962); and Stromberg v. California, 283 U.S. 359 (1930).

The decisions of this Court leave no question but that the freedom of expression and association guaranteed by the First Amendment comprehends not only the right of an individual to speak his mind, but also the right to advocavy and his right to join his fellows in an effort to make that advocacy effective. See NAACP v. Alabama, 357 U.S. 449, 2 L.Ed.2d 1488, 78 S.Ct. 1163 (1958). The right to vote in silence, without more, is a mere shadow of the sphere of political speech, assembly, association, and petition protected by the First Amendment.

Since its decision in Mitchell, supra, this Court has on several occasions applied the principle that where the curtailment of First Amendment freedoms is concerned, the state may prevail only if it can show that it has a "compelling" interest in limiting those rights. Restraints on First Amendment freedoms are constitutionally permissible only if a compelling, paramount, and subordinating state interest justifies the governmental regulations that places

this restraint on that freedom. This compelling state interest has to be more than a mere showing of rational relationship to some colorable state interest. See NAACP v. Button, supra; Sherbert v. Verner, supra; United States v. O'Brien, 391 U.S. 367, 20 L.Ed.2d 672, 88 S.Ct. 1673 (1968); Gibson v. Florida Legislative Investigation Comm., 372 U.S. 539, 9 L.Ed.2d 929, 83 S.Ct. 889 (1963); Bates v. Little Rock, 361 U.S. 516, 4 L.Ed.2d 480, 80 S.Ct. 412 (1960).

> "It is basic that no showing merely of a rational relationship to some colorable state interest would suffice, in this highly sensitive constitutional area, only the gravest abuses, endangering paramount interest, give occasion for permissible limitations." (emphasis supplied) Sherbert v. Verner, supra, p.406.

The United States Supreme Court has also made it clear in recent decisions that, even if a compelling state purpose is present, the restriction must be drawn with narrow specificity. The laws limiting First Amendment freedoms must deal only within those areas in which the compelling state interest justifies regulation; if they prohibit conduct both within and without this area of interest, they are unconstitutionally overbroad. See Keyishean v. Board of Regents, 385 U.S. 589, 17 L.Ed.2d 629, 87 S.Ct. 675 (1967); NAACP v. Button, supra; Shelton v. Tucker, 364 U.S. 479, 5 L.Ed.2d 231, 81 S.Ct. 247 (1960); Talley v. California, 362 U.S. 60, 4 L.Ed.2d 559, 80 S.Ct. 536 (1960); Mancuso v. Taft, 341 F.Supp. 574 (D.C.R.I. 1972).

> "It would plainly be encumbent upon [the state] to demonstrate that no

alternative forms of regulation would combat the asserted abuses without infringing the First Amendment rights." Sherbert v. Verner, supra, p. 407.

No one can reasonably deny the need to limit some political activities such as campaigning during working hours, the use of official influence to coerce political action, and the solicitation of political contributions from fellow employees. Fortunately, there are numerous Florida laws elsewhere on the books that apply state wide to prevent these abuses. However, the more remote is the connection between a particular activity and the performance of official duty, then the more difficult it is to justify restriction on the ground that there is a compelling public need to protect the efficiency and integrity of the public service. Measured against these standards, the political activity prohibitions of § 23 of the Escambia County Civil Service Act are clearly oppressive and constitutionally impermissible. Those political activities that need restraining (i.e., coercing, political influence, etc.) can be prohibited by specific provisions of the Civil Service Act without such all inclusive overkill. But there is no evidence in the record, now any legislative history, nor any other testimony showing a compelling state interest necessitating a law preventing all civil servants in Escambia County, Florida, from taking an active part in any political campaign at any level at any time except to vote in silence as the law now states. Other Florida counties are not so restricted, their activities being either unregulated, or where regulated, as here, have been declared unconstitutional by lower Florida Court decision which has not been appealed. See Gray v. Hillsborough County, Florida,

13th Circuit. Case No. 204302, order filed June 6, 1972. A copy of this opinion is attached to this petition as Exhibit 7 of the Appendix to the petition (infra pp. A-74 - A-76). § 23 cannot withstand the challenge of First Amendment concepts.

Mitchell's, supra, facts, upon which the court below so heavily relies, are not the facts of today. As the number of governmental employees increases, correspondingly the restrictions on freedom of political expression of an ever increasing group grow. These restrictions must be reduced by narrowly drawn statutes attacking the very precise evil that a compelling state interest requires. Indeed, since First Amendment rights are involved, the compelling interest must be substantial and this must include in this case a clear showing that the proper performance of duties has been seriously impaired and that interference with governmental operation has resulted. Mitchell, supra, has been superseded by the more thoughtful rationale of subsequent decisions of this Court regarding regulation of First Amendment rights. Others share in this conclusion:

> Fort v. Civil Service Commission, 61 Cal. 2d 331, 392 P. 2d 385, 38 Cal.Rptr. 625 (1965) struck down the county provision "taking any part in political management or affairs of any political campaign or election . . ." as regulating broadly an area not supported by a compelling public interest.
>
> Minielly v. Oregon, 411 P.2d 69 (1966) struck down a state statute which prohibited a civil servant from becoming a candidate for sheriff at the next election unless he resigned his civil service position as regulating too

broadly in the area of First Amendment rights.

Kinnear v. City and County of San Francisco, 38 Cal.Rptr. 631, 392 P.2d 391 (1964) struck down a city and county statute providing that any appointive officer or employee of the city or county who shall become a candiate for election shall automatically forfeit his position, as regulating broadly without a showing of a compelling state interest.

DeStefano v. Wilson, 233 A.2d 682, 96 N.J.Super. 592 (1967) struck down a rule providing that no firemen shall take an active part in politics or political contests or engage in controversy concerning candidates or issues as placing an unconstitutional burden upon the exercise of First Amendment liberties.

In Hobbs v. Thompson, 448 F.2d 456 (1971) the United States District Court of Appeal for the Fifth Circuit struck down a Macon, Georgia ordinance providing:

> "No employee of the City's Fire Department shall take an active part in any primary or election, and all [such] employees are hereby prohibited from contributing any money to any candiate, soliciting votes or prominently indentifying themselves in a political race with or against any candidate for office,"

as unconsitutionally vague and overbroad on its face.

In Mancuso v. Taft, 341 F.Supp. 574 (1972), the United States District Court for Rhode Island struck down a city ordinance prohibiting civil servants of the city from becoming a candidate for nomination or election for public office, making campaign contributions, or taking any active part in management of a political organization, as vague and overbroad in violation of the First Amendment.

Even in Florida, the Circuit Court of Hillsborough County in Gray v. Hillsborough County, Florida, No. 204302, judgment rendered June 6, 1972, struck down a regulation prohibiting civil servants from taking an active part in political campaigns, circulating petitions, working at the polls, distributing badges and other indicia, as violative of the First and Fourteenth Amendment of the Constitution of the United States.

Also see National Association of Letter Carriers, AFL-CIO v. United States Civil Service Commission, 346 F.Supp. 578 (D.C. D.C. 1972) opinion filed July 13, 1972; Huerta v. Flood, 447 P.2d 866 (1968); City of Miami v. Sterbentz, 203 So.2d 4 (Fla.1967); Rosenfield v. Malcom, 421 P.2d 697 (Cal. 1967); Bagley v. Washington Township Hospital Dis., 421 P.2d 409 (Cal. 1966); Belshaw v. City of Berkley, 54 Cal.Rptr. 727 (1966).

There is presently scheduled for argument in March, 1973, two cases each bearing directly upon the problems presented sub judice. Broadrick v. Oklahoma State Personnel Board, Docket Number 71-1639, and U.S. Civil Service Commision v. Letter Carriers, Docket Number 72-634. The acts sought to be performed by Petitioners sub judice are identical with Broadrick, supra, and are very much analogous to those in Letter Carriers, supra.

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It is the Petitioners' contention that the favorably cited state and federal courts have correctly interpreted and applied current constitutional principles, and that the political activities prohibitions in the case sub judice such as campaigning, circulating of petitions and distribution of indicia favoring or opposing candidates, suffer from the same infirmities that compelled the decisions in the above cases.

Further, the prohibitions of § 23 of the Escambia County Civil Service Act are impermissively vague and uncertain. The vice of vagueness is not merely the failure to give fair notice of what is prohibited, but the likelihood that such a statute will exert a chill upon the exercise of protected liberties. See Keyishean v. Board of Regents, supra. § 23 provides one may not "take an active part in any political campaign." The vagueness and uncertainty lies in what constitutes "active part" and "political." Does writing a letter to the newspaper seeking support for a program endorsed by a political party or candidate, such as pollution control, constitute an active part in a political campaign? Can one attend a political rally and sit on a platform where his presence will be noted? If one is a member of the P.T.A., fraternal lodge, local bar association, can he urge the organization to pass a resolution of political import? Confusion and uncertainty persist under this taking an active part formula. The act is capable of sweeping and uneven application. The uncertainities that abound now produce excessive overcaution and will stifle words and acts not explicitly and expressly prohibited.

The political activities prohibitions encompassed by § 23 invidiously and

unconstitutionally discriminate against Escambia County Civil Service employees in the exercise of fundamental political freedoms, in violation of the Fifth and Fourteenth Amendments. These political prohibitions discriminate against covered county civil servants and favor non-county employees and civil servants not covered by § 23 by depriving covered employees of these fundamental political rights protected by the First Amendment. The previous decisions of this Court as mentioned before, leave no question that such discrimination impringing on such fundamental rights must be supported by a compelling state interest, and must be drawn with extreme precision to further such an interest. No compelling state interest can be advanced to support the broadranging prohibition against political activity in any form. It is difficult to see any reason whatsoever, for example, why a janitorial employee of a private industry should possess political rights denied Janitorial employees of the county, or why a typist for a law firm should be viewed differently from a typist in the courthouse.

That the question is substantial is without doubt. Many jurisdictions relying heavily on this Court's immense doctrinal development concerning First and Fifth Amendment jurisprudence, have emancipated civil servants from the enslavement of political activity prohibitions. Other jurisdictions reluctantly keep its civil servants shackled to Mitchell, supra, and consequently their only route to political freedom means giving up their livelihood, an awesome sacrifice for fundamental rights guaranteed to them by the Constitution.

In the original complaint, Petitioner on fourteen occasions named the First, Fifth

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or Fourteenth Amendments as the provisions of the Federal Constitution being violated. Petitioner was silent as to violations of the Florida Constitution. All briefs to the lower court dwelt on the Federal Constitutional violations and intentionally avoided state Constitutional arguments. On Page 4 of Petitioner's memorandum in support of Plaintiff's motion for summary judgment of unconstitutionality (Page 60 of original record to Florida Supreme Court) your Petitioner wrote as follows:

> "With all respect to this Court who would normally choose to interpret Cases based on the Florida Constitution, the undersigned does not choose to rely on Sections 4 and 5 of the State of Florida Constitution as grounds for relief, but relies completely on the appropriate Amendments to the Constitution of the United States recited herein Lest this matter for some wild, unanticipated, illogical reason be resolved against the Plaintiff, necessitating an immediate appeal to the Florida Supreme Court, who also in a moment of passion might inconceivably affirm on adequate state grounds and specifically on Sections 4 and 5 of the Florida Constitution, this Plaintiff deliberately does not request and specifically avoids any state basis for relief and relies completely and unequivocally on the recited Amendments to the United States Constitution alleged to be violated. See Exhibit 2 of the Appendix to the petition (infra pp. A-20 - A-24).

Nevertheless the lower court found § 23, Chapter 67-1370, Florida Statutes and Rule

23.1 constitutional and not in contravention of the Florida and United States Constitutions.

The assignments of error to the Florida Supreme Court were again limited to the United States Constitution, see Exhibit 4 of the Appendix to the petition (infra pp. A-52 - A-53).

The sole point argued to the Florida Supreme Court was a follows:

> "Section 23 of the Civil Service Act of Escambia County, Florida, as written and on its face, and as applied to the Plaintiffs is unconstitutionally overbroad, unconstitutionally discriminatory, is not supported by a compelling governmental interest, exerts a chilling effect on the exercise of fundamental rights, is violative of due process and equal protection principles, and unconstitutionally demands a surrender of constitutional rights as payment for the privilege of public employment, all in violation of the First, Fifth, and Fourteenth Amendments to The Constitution of the United States."

On page 32 of that brief, Petitioner reiterated as follows:

> "The Plaintiffs reiterate that they relied only on federal grounds in the trial court. Since the trial court on its own announced that Section 23 was not in contravention with either the Florida or federal Constitution, both must be raised before this Court. Plaintiffs ask this Court to rule on the federal grounds and not Florida Constitutional grounds. Plaintiffs

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seek to avoid the possibility of the United States Supreme Court ruling that a Florida Supreme Court decision on this vital matter, if adverse to Plaintiffs, rests on adequate state grounds requiring affirmance."

The Florida Supreme Court in affirming the lower court was not explicit in pinpointing exclusive reliance upon either the Florida or the Federal Constitution. Therefore, it was specifically asked to clarify on motion for rehearing. See Exhibit 6 of the Appendix to the petition (infra pp. A-70). That motion was denied.

Petitioners properly raised in the Florida courts the constitutional issue sought to be decided by the United States Supreme Court. Petitioners' averments are so distinct and positive as to place it beyond question that they intended to assert only federal rights, and that these federal rights were brought to the attention of the lower and appellate state courts with fair precision and in a timely manner.

CONCLUSION

It is respectfully submitted that the decision of the Florida Supreme Court is not in accord with the recently refined immense doctrinal First Amendment principles uncovered in post-1947 decisions of this Court. The Statute under attack here is unconstitutionally vague, overly broad, and chills First Amdndment rights. This blanket statutory prohibition against political activity is violative of employees' rights of free speech, assembly, and press.

For the foregoing reasons, it is respectfully requested that this Petition for a

Writ of Certiorari be granted.

Respectfully submitted,

PAUL SHIMEK, JR., ESQ.
of Paul Shimek, Jr., P.A.
517 North Baylen Street
Pensacola, Florida
904 - 434 - 2302
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I forwarded for filing this date forty (40) copies of this printed petition for writ of certiorari with the Clerk, United States Supreme Court, by U.S. Mail and that I served upon Hobart O. Worley, Jr., Esquire, 334 Brent Building, Pensacola, Florida 32501 and R H. Merritt, Esquire, 105 Lawyers Building, 314 South Baylen Street, Pensacola, Florida 32501, each, three copies by mailing same to them, first class postage pre-paid, in accordance with Rule 33, Supreme Court Rules. I further certify that all parties required to be served have been served.

PAUL SHIMEK, JR., ESQ.

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APPENDIX A

First, Fifth, and Fourteenth Amendments, U.S.C., § 23, Chapter 67-1370, Florida Statutes, 1967, § 23.1, Rules of the Escambia County, Florida, Civil Service Board

FIRST AMENDMENT, CONSTITUTION OF THE UNITED STATES

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FIFTH AMENDMENT, CONSTITUTION OF THE UNITED STATES

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT CONSTITUTION OF THE UNITED STATES

Section 1. All persons born or naturalized in the United States,

and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or an an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged

in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressihg insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligaions and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

§ 23, Chapter 67-1370, Laws of Florida 1967

No person holding an office or place in the classified service under the provisions of this act shall seek elective public office, or serve in any elective or appointive position in any political party, or take an active part in any political campaign, or serve as an officer or a member of a committee of any political club or organization, or circulate or seek signatures to any petition provided for in any primary or election law or act as a worker at the polls, or distribute badges, colors, or indicia favoring or opposing a candidate for election or nomination to a federal, state, county or municipal public office, provided, however, that nothing in this act shall be construed to prohibit or prevent any such officer or employee from becoming or continuing to be a member of a political

club or organization, or from attendance upon political meetings, or from enjoying entire freedom from all interference in casting his vote.

Any person violating the provisions of this section shall be dismissed from the service of the county.

Rule 23.1, Rules and Regulations of the Escambia County Civil Service Board for the Administration of the Civil Service Act

All employees holding positions in the classified service are governed by the provisions of the corresponding Section of the Act, relating to elective office and political activity.

APPENDIX B

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM M. CHISOLM; WILLIAM G. CHAMPLIN; I. S. POWELL, J. L. TAYLOR; and TED CIAMO; as members of the Civil Service Board of Escambia County, Florida; CARL H. HARPER, County Solicitor of Escambia County, Florida; and REUBIN O'D. ASKEW, Governor of the State of Florida,

Defendants.

Case No.

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COMPLAINT

COMES NOW the Plaintiff, in accordance with the provisions of Chapter 86, Florida Statutes, suing the Defendants upon whom he has service of process, and says as follows:

1. All parties are natural persons over the age of twenty-one, under no legal disabilities, and residents of the State of Florida. The Plaintiff is a Deputy Sheriff of Escambia County and is a person holding an office or place in the classified service under the provisions of the Civil Service Act of Escambia County, Florida, and subject to the Act and the Rules promulgated thereunder. The Defendant, WILLIAM M. CHISOLM, is the Chairman of the Civil Service Board of Escambia County, Florida, and the Defendants, WILLIAM G. CHAMPLIN, I. S. POWELL, J. L. TAYLOR, and TED CIAMO, are members of said Board. The Defendant, ROYAL J. UNTREINER, is presently and at all times material hereto the duly appointed Sheriff of Escambia County, Florida. The Defendant, CARL H. HARPER, is the duly elected County Solicitor of Escambia County, Florida. The Defendant, REUBIN O'D. ASKEW, is the Governor of the State of Florida, and by law is vested with the supreme executive power of the State. All Defendants are charged with the duty of faithfully executing or prosecuting for the violation of the laws or rules

and regulations hereinunder attacked in their particular and respective capacity in accordance with the office held.

2. The Plaintiff is a person holding a place in the classified service under the provisions of the Civil Service Act of Escambia County, Florida, Chapter 67-1370, House Bill Number 2863, which was approved by Governor Kirk on August 1, 1967, and was filed in the office of the Secretary of State on August 2, 1967. Your Plaintiff has been employed as a Deputy Sheriff since 1965, and desires to seek the elective public office presently held by Roy L. Moss but is prohibited by Section 23 of said Act and Section 23 of the Rules and Regulations of the Escambia County Civil Service Board for the Administration of the Civil Service Act, specifically Section 23.1, hereinafter referred to as Section 23 of the Act and Section 23.1 of the Rules. Your Plaintiff desires to take an active part in forthcoming political campaigns and desires to serve as a member of a committee of a political club, but is precluded by the provisions of said Act and Rules. Your Plaintiff desires to circulate and seek signatures to petitions in forthcoming elections but is precluded by the provisions of Section 23 of the Act and Section 23.1 of the Rules. Your Plaintiff desires to distribute badges, colors, or other indicia favoring George C. Wallace as a candidate for election to the Presidency of the United States. Your Plaintiff also desires to distribute badges, colors, or other indicia favoring or opposing candidates for election in county and municipal offices, however, your Plaintiff is precluded from doing so by the provisions of Section 23 of the Act and Section 23.1 of the Rules. Your Plaintiff has in the past at the request of friends, specifically police officers of the City of Pensacola, read and reviewed a list of candidates that City of Pensacola police felt were favorable to their position and which list was by your Plaintiff handed to several members of the public for which he was promptly and unnecessarily called to account to Sheriff Untreiner and to D. P. Caldwell, Chief of Pensacola Police Department. Your Plaintiff has inquired of the Honorable Joe Oldmixon,

and regulations hereinunder attacked in their particular and respective capacity in accordance with the office held.

2. The Plaintiff is a person holding a place in the classified service under the provisions of the Civil Service Act of Escambia County, Florida, Chapter 67-1370, House Bill Number 2863, which was approved by Governor Kirk on August 1, 1967, and was filed in the office of the Secretary of State on August 2, 1967. Your Plaintiff has been employed as a Deputy Sheriff since 1965, and desires to seek the elective public office presently held by Roy L. Hess but is prohibited by Section 23 of said Act and Section 23 of the Rules and Regulations of the Escambia County Civil Service Board for the Administration of the Civil Service Act, specifically Section 23.1, hereinafter referred to as Section 23 of the Act and Section 23.1 of the Rules. Your Plaintiff desires to take an active part in forthcoming political campaigns and desires to serve as a member of a committee of a political club, but is precluded by the provisions of said Act and Rules. Your Plaintiff desires to circulate and seek signatures to petitions in forthcoming elections but is precluded by the provisions of Section 23 of the Act and Section 23.1 of the Rules. Your Plaintiff desires to distribute badges, colors, or other indicia favoring George C. Wallace as a candidate for election to the Presidency of the United States. Your Plaintiff also desires to distribute badges, colors, or other indicia favoring or opposing candidates for election in county and municipal offices, however, your Plaintiff is precluded from doing so by the provisions of Section 23 of the Act and Section 23.1 of the Rules. Your Plaintiff has in the past at the request of friends, specifically police officers of the City of Pensacola, read and reviewed a list of candidates that City of Pensacola police felt were favorable to their position and which list was by your Plaintiff handed to several members of the public for which he was promptly and unnecessarily called to account to Sheriff Untreiner and to D. P. Caldwell, Chief of Pensacola Police Department. Your Plaintiff has inquired of the Honorable Joe Oldmixon,

Supervisor of Elections of Escambia County, Florida, who has indicated that he will refuse to permit your Plaintiff to file for qualification for office because he is presently a person holding a place in the classified service and is prohibited from so acting by the provisions of Section 23 of the Act and Section 23.1 of the Rules. Your Plaintiff fears that if he wilfully seeks elective public office, or serves in any position in any political party, or takes any active part in any political campaign, or circulates or seeks signatures to any petitions provided for in primary or general elections, or distributes badges, colors, or other indicia favoring or opposing any candidate for any election to any federal, state, county or municipal office, that he will be prosecuted and found guilty of a misdemeanor and punished by imprisonment and/or fined for his activities.

3. In addition to suing individually, this action is also, and, or, in the alternative a class action because the questions presented are those of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court.

4. Your Plaintiff alleges that Section 23 of the Act, entitled "Elective Office or Political Activity," is unconstitutional when measured with reference to modern principals of constitutional adjudication and present day conditions. The provisions of Section 23 are void in that its provisions regulate broadly an area not supported by compelling governmental interests. The provisions of Section 23 that prohibits a civil service employee from becoming a candidate for popular election to any public office unless he immediately resigns his civil service position is overbroad and is in clear violation of the First Amendment to the Constitution of the United States.

5. The political management and political campaigning prohibitions of Section 23 of the Civil Service Act of Escambia County, Florida, are constitutionally overbroad and in conflict with the First Amendment to the United States Constitution in that

the provisions regulate in sweeping terms an area clearly beyond the range of compelling governmental interests, and exerts a chilling effect on the exercise of fundamental rights. The broad ranging proscriptions against political management and campaigning in any form, in any election, by any civil servant in federal, state, county or municipal election is overbroad and does not serve as a shield protecting employees from coercive practices of their superiors, but rather acts as a sword prohibiting employees from voluntarily engaging in political activities clearly protected by the First Amendment to the United States Constitution.

6. The prohibitions of Section 23 of the Civil Service Act of Escambia County are impermissibly vague and uncertain and thus constitutionally invalid under the First and Fifth Amendments to the United States Constitution. The Plaintiff's fundamental political freedoms protected by the First Amendment are involved and are effected herein, and the provisions of the Act and the accompanying regulations are not definite nor certain, but are vague and confusing. The act fails to give fair notice of what is prohibited and exerts a chilling effect upon the exercise of protected liberty.

7. The provisions of Section 23 invidiously and unconstitutionally discriminate against thousands of civil service employees in the exercise of fundamental political freedoms in violation of the Fifth Amendment to the United States Constitution. Janitorial employees of private industry possess political rights denied janitorial employees who are persons holding a place in the classified service under the provisions of the Act. Private investigators, guards, and law enforcement employees of private industry possess political rights denied law enforcement employees of the Sheriff's Department of Escambia County, Florida, covered by the Act.

8. The Legislature of Florida has attempted to forfeit the constitutional rights of your Plaintiff and of all persons holding places in the classified service by conditioning public

employment upon the surrender of said constitutional rights.

9. Your Plaintiff has engaged, desires to engage, and will continue to engage in acts which are probable violations of the provisions of Section 23 of the Act and Section 23.1 of the Rules. A case or controversy exists and this Court has jurisdiction to grant declaratory and injunctive relief. Your Plaintiff faces the peril of losing his job and further faces prosecution by the Defendant, CARL H. HARPER, under the laws of the State of Florida. Since First Amendment rights are at stake and genuine risk or serious penalty is faced, this Court should forthwith take jurisdiction, require briefs on the law, and forthwith rule on the questions presented. Your Plaintiff suggests that a less restrictive alternative than the provisions of Section 23 of the Act can protect against all pertinent abuses and that there is no compelling governmental interest which justifies banning voluntary, partisan activity.

10. The constitutional infirmaties of the provisions of Section 23 of the Civil Service Act of Escambia County, Florida, cannot be cured by piecemeal review or by the salvation of any one clause within the entire paragraph because the chilling effect of the overbroad section would continue to stifle First Amendment liberties.

11. Section 23 of the Civil Service Act of Escambia County, Florida, amended July 1, 1971, recites as follows:

> SECTION 23. Elective office of political activity.
>
> No person holding an office or place in the classified service under the provisions of this act shall seek elective public office, or serve in any elective or appointive position in any political party, or take an active part in any political campaign, or serve as an officer or a member of a committee of any political club or organization, or circulate or seek signatures to any petition provided for in any primary or election law or act as a worker at the polls, or distribute badges, colors or indicia favoring or opposing a candidate for election or nomination to a federal, state, county or municipal public office, provided, however, that nothing in this act shall be construed to prohibit or prevent any such officer or employee from becoming or continuing to be a member of a political club or organization, or from attendance upon political meetings,

or from enjoying entire freedom from all interference in casting his vote.

Any person violating the provisions of this section shall be dismissed from the service of the county.

12. Section 23.1 of the Rules and Regulations of the Escambia County Civil Service Board for the Administration of the Civil Service Act, adopted by the Board August 12, 1969, recites as follows:

SECTION 23. ELECTIVE OFFICE OR POLITICAL ACTIVITY.

23.1. All employees holding positions in the classified service are governed by the provisions of the corresponding section of the Act, relating to elective office and political activity.

WHEREFORE, Plaintiff prays that this Court will take jurisdiction and determine that this cause may be maintained as a class action and that the Plaintiff, individually and collectively represents all persons holding places in the classified service and who are subject to the provisions of Section 23 of the Act and Section 23.1 of the Rules, and who presently desire, or will in the future desire, to engage in activities which are or may be in violation of the provisions of said Sections.

Further, your Plaintiff prays that this Court will declare:

(a) That the blanket prohibition of political activity in Section 23 of the Act and Section 23.1 of the Rules are an unjustified encroachment upon the Plaintiff's First Amendment rights of free speech, assembly and press;

(b) That the above quoted paragraphs of Section 23 of the Act and Section 23.1 of the Rules are extremely broad in that they abridge Plaintiff's First Amendment rights to a far greater extent than is required to correct the evils at which the Statute is directed;

(c) That the above quoted paragraphs of Section 23 of the Act and Section 23.1 of the Rules are unconstitutionally vague and reasonable men often differ as to their interpretation and may only guess at what activities fall within the broad prohibitions

in the Statute;

(d) That the above quoted paragraphs of Section 23 of the Act and Section 23.1 of the Rules deny the equal protection of the laws to the class of citizens affected by the Sections in that it denies to that group of citizens the rights granted to all other citizens without justification for the distinction;

(e) That the above quoted paragraphs of Section 23 of the Act and Section 23.1 of the Rules divest the Plaintiff's Fifth and Fourteenth Amendment guarantees of due process of law in that Plaintiff is denied his political liberty without justification;

(f) That Section 23 of the Act and Section 23.1 of the Rules divest the class of Fifth and Fourteenth Amendment guarantees of substantive due process of law in that his vested property rights are subject to divestment without just cause or due process;

(g) That Plaintiff, by virtue of his employment with the County of Escambia, has acquired valuable vested property rights. The Civil Service Act vests said Plaintiff with rights of tenure during good behavior and the Civil Service Act vests said Plaintiff with valuable retirement benefits upon the condition that said Plaintiff be employed in good standing upon the date of his retirement;

(h) That the Defendants threaten to invoke the sanctions of Section 23 of the Act and Section 23.1 of the Rules against said Plaintiff for certain alleged political activities of the Plaintiff and the Civil Service Board and its members threaten to dismiss Plaintiff from employment pursuant to Section 23 which requires the Board to comply and requires the Defendant, CARL H. HARPER, to prosecute;

(i) That Plaintiff has no adequate remedy at law and the Defendants will, if not enjoined by this Court, undertake to effect the dismissal of Plaintiff from his employment, all under color of Section 23 of the Act.

Further, your Plaintiff prays that this Court will declare that all persons covered under Section 23 of the Act and

Section 23.1 of the Rules shall be permitted to take an active part in political management or in political campaigns including:

(j) Candidacy for or service as a delegate or alternate to a political convention;

(k) Taking a prominent role in any political convention, including making speeches and preparing resolutions;

(l) Preparing for a political rally and addressing the meeting on any partisan political matter;

(m) Membership in political clubs without compensation;

(n) Distributing campaign literature and wearing badges;

(o) Publishing or having an editorial or managerial role with a partisan newspaper, and being permitted to write articles or letters, except that the federal employee could not make reference to his government employment;

(p) Organizing or participating in any political parade;

(q) Initiating or signing nominating petitions on behalf of a partisan candidate;

(r) Candidacy for any national, state, county or municipal office.

Lastly, your Plaintiff prays that this Court will:

(s) Declare that Section 23 of the Act and Section 23.1 of the Rules are unconstitutional, invalid, and void under the First and Fifth Amendments to the United States Constitution.

(t) Permanently enjoin each and all of the Defendants from enforcing or threatening to enforce the provisions of Section 23 of the Act and Section 23.1 of the Rules against your Plaintiff and any and all members of the class that he represents.

Paul Shimek, Jr.
For the Corporation
517 North Baylen Street
Pensacola, Florida

STATE OF FLORIDA

COUNTY OF ESCAMBIA

On this 16th day of May, 1972, did personally appear

JAMES RUSSELL SWINNEY, III, the Plaintiff herein, who, after being duly sworn did depose and state that he has read the foregoing and the factual allegations contained therein are both true and correct to the best of his information and belief.

James Russell Swinney, III

SWORN TO AND SUBSCRIBED before me the undersigned, a Notary Public, on the day, month, and year first above written.

Brenda Jo Eichelberger
Notary Public

My Commission Expires: 12/1/72

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINLEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM M. CHISOLM, WILLIAM G. CHAMPLIN, I. S. POWELL, J. L. TAYLOR, and TED CIAMO, as members of the Civil Service Board of Escambia County, Florida; CARL H. HARPER, County Solicitor of Escambia County, Florida; and REUBIN O'D. ASKEW, Governor of the State of Florida,

Defendants.

Case No. 72-1310

PLAINTIFF'S AMENDED COMPLAINT

COMES NOW the Plaintiff, by his undersigned attorney, in accordance with the provisions of Rule 1.190(a), FRCP, filing this amended complaint, and says as follows:

1. Each and every allegation of the original complaint is reaffirmed and restated as though contained and recited herein in toto under oath and in addition, the Plaintiff attacks in the same manner and for the same reasons the constitutionality of Section 18 of the Civil Service Act of Escambia County, Florida, as it applies to Section 23 activity.

2. Section 18 of the Civil Service Act of Escambia County, Florida, recites as follows:

> SECTION 18. Violations.
>
> Any person who shall willfully violate any of the provisions of this act, or of the rules of the board, shall be guilty of a misdemeanor, and shall on conviction thereof, be punished as provided by law.

3. The Rules and Regulations of the Escambia County Civil Service Board for the Administration of the Civil Service Act adopted on August 12, 1969, Section 18 recites as follows:

> SECTION 18. PENALTIES FOR VIOLATIONS.
>
> 18.1 The violation of any of the provisions

of the Civil Service Act or these rules, in addition to being a misdemeanor under law, is subject to the restrictions in Section 4 of these rules.

4. The Plaintiff also attacks as unconstitutional all restrictions whatsoever in Section 4 of the Rules and Regulations as it pertains to imposition of any penalty or chilling of any right that is sought to be suppressed or regulated by the provisions of Section 23.

5. Your Plaintiff alleges that the Florida Legislature, under the enabling special act known as Chapter 67-1370 herein, may not provide for criminal penalties for acts committed in Escambia County, Florida, in violation of the provisions of Section 23 for the reason that the criminal statutes must be general and uniform in application throughout the entire State of Florida. Section 18 as it applies to prosecution for violations of Section 23 are unconstitutional as a matter of law for all the reasons recited in the original complaint. Neither Carl H. Harper, County Solicitor of Escambia County, nor any prosecutor can be vested with any criminal jurisdiction whatsoever for any violation of Section 23 via Section 18. The undersigned challenges the punitive provisions of the Civil Service Act, i.e., Section 18 and Section 4 and the Rules promulgated thereunder for each and every reason specifically alleged hereinbefore in the original complaint.

I HEREBY CERTIFY that a true copy of the foregoing was furnished by delivery to Carl H. Harper, Esquire, County Solicitor, Court of Record Building, Pensacola, Florida, this 19th day of May, 1972; by U.S. Mail to Royal J. Untreiner, Sheriff of Escambia County, Florida, Sheriff's Department, Pensacola, Florida; William H. Chisolm, Chairman of the Civil Service Board of Escambia County, 2812 West Cervantes Street, Pensacola, Florida; Honorable Reubin O'D. Askew, Governor of the State of Florida, The Capitol, Tallahassee, Florida; the 22nd day of May, 1972

Paul Shlenk, Jr.
For the Corporation
517 North Baylen Street
Pensacola, Florida

A-15 14

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IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY,

STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

vs.

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida, et al,

Defendants.

Case No. [illegible]

ANSWER AND DEFENSES

Answering the complaint and the amended complaint filed herein, defendants Chisolm, Champlin, Powell, Taylor and Ciano, as members of and constituting the Civil Service Board of Escambia County, Florida, say:

1. They admit paragraphs 1, 11 and 12 of the original complaint.

2. They deny all other allegations of the original complaint.

3. They admit paragraphs 2 and 3 of the amended complaint.

4. They deny all other allegations of the amended complaint.

Further answering the complaint as amended, and as affirmative defenses, these defendants say:

5. The plaintiff does not truly and fairly represent the interests of all of the classified employees of Escambia County, Florida or a class of such employees.

6. There is not a sufficient justiciable controversy or issue to invoke the jurisdiction of the Court to entertain a declaratory action.

I HEREBY CERTIFY that copy hereof has been furnished to Paul Shimek, Jr., Esquire, attorney for plaintiff, 517 North Baylen Street, Pensacola, Florida, and to R. H. Merritt, Esquire, 105 Lawyers Building, 314 South Baylen Street, Pensac

Florida, attorney for defendant, Royal J. Untreiner, Sheriff, by mail, this 7th day of June, 1972.

Hobart O. Harley, Jr.
334 Trent Building
Pensacola, Florida 32501
Attorney for Defendant Civil
Service Board

IN THE CIRCUIT COURT IN AND FOR

ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

CASE NO. 72-1310

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM M. CHISOLM, WILLIAM G. CHAMPLIN, I. S. POWELL, J. L. TAYLOR and TED CIAMO, as members of the Civil Service Board of Escambia County, Florida: CARL H. HARPER, County Solicitor of Escambia County, Florida; and REUBIN O'D. ASKEW, Governor of the State of Florida,

Defendants.

ANSWER TO ORIGINAL COMPLAINT

Comes now the defendant, Royal J. Untreiner, Sheriff of Escambia County, Florida, by and through his undersigned attorney, and answers the original complaint and says:

1. Admitted.
2. Denied.
3. Neither admitted nor denied.
4. Denied.
5. Denied.
6. Denied.
7. Denied.
8. Denied.
9. Denied.
10. Neither admitted nor denied.
11. Admitted.
12. Admitted.

ANSWER TO AMENDED COMPLAINT

1. Reaffirm and reinstate answers to original complaint in toto.

2. Admitted.

3. Admitted.

4. Neither admitted nor denied but suggest to the Court that the paragraph be striken or be construed as a prayer for relief.

5. Denied.

R. H. Merritt

R. H. MERRITT
105 Lawyers Building
314 South Baylen Street
Pensacola, Florida
Attorney for Royal J. Untreiner,
Sheriff of Escambia County, Florida

I certify that I have on this the 6th day of June, 1972, by regular United States Mail, furnished a copy of the foregoing answers to Paul Shimek, Jr., Esq., as attorney for the above named plaintiff, and a copy to Robert O. Worley, Jr., Esq., as attorney for the Escambia County Civil Service Board.

R. H. Merritt

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWIMEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM M. CHISOLM, WILLIAM G. CHAMPLIN, I. S. POWELL, J. L. TAYLOR, and TED CIAMO, as members of the Civil Service Board of Escambia County, Florida; CARL H. HARPER, County Solicitor of Escambia County, Florida; and REUBIN O'D. ASKEW, Governor of the State of Florida,

Defendants.

Case No. 72-1310

FILED
Jan 4 3 PM '72
CLERK CIRCUIT COURT
ESCAMBIA COUNTY, FLA.

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT OF UNCONSTITUTIONALITY

This Court has before it the sworn complaint and amended complaint, the original memorandum in opposition to Defendants' motions to dismiss (Part I) and memorandum in opposition to Defendants' motions to dismiss (Part II). Plaintiff incorporates in this argument attacking the constitutionality of the statute the memorandums entitled Part I and Part II. As advised in those memorandums, this is the final comment which will be submitted to the Court. It is designed to bring the Court up-to-date on recent court rulings both in the state and federal courts. It is designed also to demonstrate to this Court what the federal courts will do on the question if confronted, at least in the 5th Circuit of which we are a part.

On September 16, 1971, the 5th Circuit in Hobbs v. Thompson, 448 F.2d 456, considered a Macon, Georgia, ordinance. That ordinance cast a political pall over the electioneering activities of the firemen and policemen of Macon, Georgia. The firemen and policemen contended in their law suit in the United States District Court that the ordinance was both facially unconstitutional and unconstitutional as applied to them. The ordinance in question

POOR COPY
BLEED THROUGH

reads as follows:

> "No employee of the City's Fire Department shall take an active part in any primary or election, and all [such] employees are hereby prohibited from contributing any money to any candidate, soliciting votes or prominently identifying themselves in a political race with or against any candidate for office."

Another rule of the Macon City ordinance stated that the above also applied to the employees of the Macon Police Department. The United States District Court found that the ordinance and charter were constitutional but the 5th Circuit reversed and held that the above recited ordinance was unconstitutionally vague and overbroad on its face and that the case was appropriate for federal equitable intervention, since exhaustion of state remedies was not a pre-requisite. Pages 456-469 of the opinion deal almost entirely with the question of the exhaustion of state remedies, abstention by federal courts, comity, injunctive relief in federal courts, etc. Thereafter the opinion describes in detail many of the items previously discussed in Part I and Part II of the undersigned's memorandums. To repeat the guts of the Hobbs decision which controls now the entire 5th Circuit, would be unnecessary duplicity. Accordingly, pages 469-476 of the opinion are attached hereto for the Court's reading. The omitted 13 pages would enlighten the Court as to federal procedures involving state action, but it would not otherwise enlighten this Court on the matters before it.

On April 17, 1972, a decision was rendered in the United States District Court for Rhode Island entitled Mancuso v. Taft involving the right of the City of Cranston, Rhode Island, to restrict the extra political activities of its classified service employees. Mr. Kenneth R. Mancuso was a full time police officer who became a candidate for nomination for representative to the Rhode Island General Assembly in violation of Section 14.09 of the City of Cranston Home Rule Charter. Section 14.09 provided in part:

> "The following practices are prohibited:
> ...

> (c) Continuing in the classified service of the City after becoming a candidate for nomination or election to any public office
> ...
>
> (f) Making directly or indirectly if a member of the classified service any contribution to the campaign funds of any political organization or candidate for public office or taking any part in the management of any political organization or in the conduct of any political campaign further than in the exercise of the rights of a citizen to express his opinion and to cast his vote.
> ...
>
> Any officer or employee of the City wilfully violating any of the provisions of this section, shall be removed from such office or employment. ..."

Mr. Mancuso deliberately violated the provisions of Section 14.09 (c) and (f) and on the same day filed suit seeking declaratory and injunctive relief. Judge Pettine found the sections violated the First Amendment to the United States Constitution, were vague, and were overbroad. I commend this decision to this Court and attach herewith a certified copy received this date under the certification and hand of the Clerk of the United States District Court for the District of Rhode Island.

Attached also and made a part and parcel of this brief is a certified copy of the complaint filed in the case of Gray v. Hillsborough County, Florida, in the Circuit Court of Hillsborough County, Florida, on December 20, 1971, and a certified copy of the final judgment rendered on June 6, 1972, also received this date.

Under consideration in the Tampa case was Section 24 of the Hillsborough County Civil Service Act. Section 24 of the Hillsborough County Civil Service Act is within a few words a verbatim carbon copy of Section 23 of the Escambia County Civil Service Act. Section 24 of the Hillsborough County Civil Service Act reads as follows:

> "No person holding an office or place in the classified service under the provisions of this act shall take an active part in a political campaign or circulate or seek signatures to any petition provided for by any primary or election law or act as a worker at the polls, or distribute badges, colors or insignia favoring or opposing a candidate for election

> or nomination to a federal, state, county or municipal public office, provided, however, that nothing in this act shall be construed to prohibit or prevent any such officer or employee from becoming or continuing to be a member of a political club or organization, or from attendance at political meetings, from enjoying entire freedom from all interference in casting his vote or from seeking or accepting election or appointment to public office, except as provided in subsection (b). Any person violating the provisions of this section shall be dismissed from the service."

The sworn complaint of Robert I. Gray alleges the facts before the Court. On motion for summary judgment, which was granted, Judge Flynn found Section 24 unconstitutional, invalid, and void under the First and Fourteenth Amendments to the Constitution of the United States and Sections 4 and 5 of the State of Florida Constitution.

With all respect to this Court who would normally choose cases based on the Florida Constitution to interpret, the undersigned does not choose to rely on Sections 4 and 5 of the State of Florida Constitution as grounds for relief, but relies completely on the appropriate Amendments to the Constitution of the United States recited herein. Lest this matter for some wild, unanticipated, illogical reason be resolved against the Plaintiff, necessitating an immediate appeal to the Florida Supreme Court, who also in a moment of passion might inconceivably affirm on adequate state grounds and specifically on Sections 4 and 5 of the Florida Constitution, this Plaintiff deliberately does not request and specifically avoids any state basis for relief and relies completely and unequivocally on the recited Amendments to the United States Constitution alleged to be violated.

Clearly, Section 23 of the Escambia County Civil Service Act is unconstitutional. The undersigned by an independent process of reasoning has coincidently prior to receipt of Judge Flynn's order recited the same cases that Judge Flynn finally decided were the key to unlock this festering clamp upon a select few. Just as in ancient days when all roads lead to Rome, so it is that now, all logic and reasoning points unerringly to the conclusion that Sectio

23, 18, and 4 (as Section 4 applies to Section 23), are unconstitutional for each and every reason alleged in the complaint and the three briefs. The undersigned urges this Court to deep six the statutes to a watery grave, declare the attacked sections to be unconstitutional for the reasons alleged, and grant an injunction against all parties, including Carl H. Harper, from initiating any action, civil or criminal, to punish any person covered herein for committing any acts described under Section 23.

I HEREBY CERTIFY that a true copy of the foregoing was furnished by delivery to R. H. Merritt, Esquire, 105 Lawyers Building,314 South Baylen Street, Pensacola, Florida; Hobart O. Morley, Jr., Esquire 334 Brent Building, Pensacola, Florida; Carl H. Harper, Esquire, County Solicitor, Court of Record Building, Pensacola, Florida; this 14th day of June, 1972.

Paul Shimek, Jr.
For the Corporation
517 North Baylen Street
Pensacola, Florida

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Case No. 72-1310

JUN 22 3 45 PM '72

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared _____, who, under oath, deposes and says:

This is to certify that I am _____, age _____, and residing at _____, Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is _____ and my senior supervisor or boss is _____. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Ray L. Hess.

_____

SWORN TO AND SUBSCRIBED before me this 22nd day of June, 1972.

_____
Notary Public

My Commission Expires: 12-1-73

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 26 4 49 PM '72
CLERK CIRCUIT COURT
PENSACOLA, FLA.

Case No. 72-1310

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared James A. Wynne JR., who, under oath, deposes and says:

This is to certify that I am James A. Wynne Jr., age 41, and residing at 207 Alcor Rd, Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Deputy Sheriff and my senior supervisor or boss is Royal Untreiner. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Hess.

James A. Wynne Jr.

SWORN TO AND SUBSCRIBED before me this 22 day of June, 1972.

Notary Public

My Commission Expires: 3-10-73

A-26

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 28 4 49 PM '72
CLK. CIRCUIT COURT
PENSACOLA, FLA.

Case No. 72-1310

A F F I D A V I T

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Rosemary Lee Cooley, who, under oath, deposes and says:

This is to certify that I am Civil Service Employee, age 21, and residing at [illegible] Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is [illegible] and my senior supervisor or boss is [illegible]. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Ness.

Rosemary Lee Cooley

SWORN TO AND SUBSCRIBED before me this 22 day of June, 1972.

Notary Public

My Comission Expires: 8/10/73

A-27

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Case No. 72-1310

A F F I D A V I T

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Michael C Jennone, who, under oath, deposes and says:

This is to certify that I am Michael C Jennone, age 34, and residing at [illegible], Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Sheriff's Sergeant and my senior supervisor or boss is Sheriff R. Untreiner. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign[illegible] to be elected to the Florida Legislature and to insert Roy L. Upes. I DESIRE AN ACTIVE PART ON BEHALF OF C.C.U. CANDIDATE AND A SHERIFF CANDIDATE FOR ESCAMBIA CO FLA

Michael C Jennone

SWORN TO AND SUBSCRIBED before me this 22 day of June, 1972.

Notary Public

My Commission Expires: 3-10 73

A-24

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 26 4 00 PM '72
CLERK CIRCUIT COURT
PENSACOLA, FLA.

Case No. 72-1310

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared CODIE M. EDDINS JR., who, under oath, deposes and says

This is to certify that I am [illegible], age 36, and residing at [illegible], Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is [illegible] and my senior supervisor or boss is [illegible]. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecutod for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Hess.

Codie M. Eddins Jr.

SWORN TO AND SUBSCRIBED before me this 22 day of June, 1972.

[illegible]
Notary Public

My Commission Expires: 3-11-73

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 26 4 49 PM '72
CLERK CIRCUIT COURT
ESCAMBIA CO., FLA.

Case No. 72-1310

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared RICHARD A. NIX, who, under oath, deposes and says:

This is to certify that I am [illegible], age 25, and residing at [illegible], Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is [illegible] and my senior supervisor or boss is [illegible]. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Hess.

[signature]

SWORN TO AND SUBSCRIBED before me this 22 day of June, 1972.

[signature]
Notary Public

My Commission Expires: 3-10-73

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 26 4 49 PM '72

Case No. 72-1310

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Robert M. Pincock, who, under oath, deposes and says:

This is to certify that I am Robert M. Pincock, age 28, and residing at 6701 W. Fabia St, Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Dep Sheriff and my senior supervisor or boss is Chief Untreiner. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Hess.

Robert M. Pincock

SWORN TO AND SUBSCRIBED before me this 26 day of June, 1972.

Notary Public

My Commission Expires: 9/4/72

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 26 4 49 PM '72
CLERK CIRCUIT COURT
PENSACOLA, FLA.

Case No. 72-1310

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Norman K. Silcox, who, under oath, deposes and says:

This is to certify that I am Norman K. Silcox, age 45, and residing at 1017 Alcaniz Dr. Pens., Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Sergeant and my senior supervisor or boss is Asst. Chief Untreiner. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Moss.

Norman K. Silcox

SWORN TO AND SUBSCRIBED before me this 25 day of June, 1972.

Donald D. Pa
Notary Public

My Commission Expires: 9/4/72

A-32

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

JUN 6 4 45 PM '72

CLERK CIRCUIT COURT
ESCAMBIA CO., FLA.

Case No. 72-1310

A F F I D A V I T

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Rodney A. McKinney, who, under oath, deposes and says:

This is to certify that I am Rodney A McKinney, age 29, and residing at 501 Barrancas Ave Apartment #7, Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Deputy Sheriff and my senior supervisor or boss is Sheriff Ed Wolfe. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Hess.

Rodney A McKinney

SWORN TO AND SUBSCRIBED before me this 25 day of June, 1972.

Notary Public

My Commission Expires: 7/9/74

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 26 4 49 PM '72
CLERK CIRCUIT COURT
PENSACOLA, FLA.

Case No. 72-1310

A F F I D A V I T

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Henry Edmund Cobb, who, under oath, deposes and says:

This is to certify that I am H. E. Cobb, age 29, and residing at 1512 Fairfield Drive, Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Deputy Sheriff and my senior supervisor or boss is Sheriff Untreiner. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Hess.

Edmund
Henry Cobb

SWORN TO AND SUBSCRIBED before me this 25 day of June, 1972.

Donald D. Parker
Notary Public

My Commission Expires: 9/4/74

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 26 4 45 PM '72
CLK. PENSACOLA FLA.

Case No. 72-1310

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared LONNIE R. PRICE, who, under oath, deposes and says:

This is to certify that I am Lonnie R. Price, age 26, and residing at 703 W Fairfield Dr, Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Narcotics Officer and my senior supervisor or boss is Royal Untreiner. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Moss.

Lonnie R. Price

SWORN TO AND SUBSCRIBED before me this 25 day of June, 1972.

Notary Public

My Commission Expires: 9/9/74

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

JUN 26 4 53 PM '72
CLERK CIRCUIT COURT
PENSACOLA, FLA.

Case No. 72-1310

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Daniel E. Lodge, who, under oath, deposes and says:

This is to certify that I am Daniel E. Lodge, age 24, and residing at 611 South 11th Ave Continental Apt, Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Deputy Sheriff, and my senior supervisor or boss is Sheriff Royal Untreiner. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Hess.

Daniel E. Lodge

SWORN TO AND SUBSCRIBED before me this 25 day of June, 1972.

Donald D. Parker
Notary Public

My Commission Expires: 9/4/74

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 26 4 49 PM '72

CLERK CIRCUIT COURT PENSACOLA, FLA.

Case No. 72-1310

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Vernon Edward Smith, who, under oath, deposes and says:

This is to certify that I am Vernon Edward Smith, age 29, and residing at 1601 E. Lloyd St, Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Deputy Sheriff and my senior supervisor or boss is Royal Untreiner. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Moss.

Vernon Edward Smith

SWORN TO AND SUBSCRIBED before me this 25 day of June, 1972.

Donald P. Pa

Notary Public

My Commission Expires: 9/4/74

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 26 4 53 PM '72
CLERK CIRCUIT COURT
PENSACOLA, FLA.

Case No. 72-1310

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Vincent Thomas Whitted who, under oath, deposes and says:

This is to certify that I am Vincent Thomas Whitted, age 32, and residing at 6412 Bayshore Dr., Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Deputy Sheriff and my senior supervisor or boss is Harold Caldwell. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Moss.

Vincent Thomas Whitted

SWORN TO AND SUBSCRIBED before me this 25 day of June, 1972.

Donald D. Pa
Notary Public

My Commission Expires: 9/4/74

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IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA, FLA.

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 26 4 50 PM '72
FILED
CLERK CIRCUIT COURT
ESCAMBIA CO. FLA.

Case No. 72-1310

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared JOSEPH VINCENT SEELY, who, under oath, deposes and says:

This is to certify that I am Joseph Vincent Seely, age 74, and residing at 1701 East Cross St., Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Sgt. Deputy Sheriff and my senior supervisor or boss is Royal Untreiner. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Hess.

Joseph Vincent Seely

SWORN TO AND SUBSCRIBED before me this 25 day of June, 1972.

Donald D. Pa
Notary Public

My Commission Expires: 9/9/74

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA ....FLA.

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 26 4 55 PM '72
CLERK CIRCUIT COURT
ESCAMBIA COUNTY, FLA.

Case No. 72-1310

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Raymond Willis, who, under oath, deposes and says:

This is to certify that I am Raymond Willis, age 46, and residing at 6958 Fairgrounds Rd Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Deputy Sheriff and my senior supervisor or boss is Sheriff Untreiner. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in ~~James Russell Swinney, III's~~ political campaign to be elected to ~~the Florida Legislature, will be successful, for the~~ Sheriff of Escambia Co. Fla.

Raymond Willis

SWORN TO AND SUBSCRIBED before me this 24th day of June, 1972.

M P Pensacola
Notary Public

My Commission Expires: 4/22/75

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POOR COPY

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 26 4 55 PM '72
CLERK CIRCUIT COURT
PENSACOLA, FLA.

Case No. 72-1310

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Larry R. Skinner, who, under oath, deposes and says:

This is to certify that I am Larry R. Skinner, age 25, and residing at 1131 N. 33rd Ave. Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Deputy Sheriff and my senior supervisor or boss is Sheriff Royal Untreiner. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in James Russell Swinney, III's, political campaign to be elected to the Florida Legislature and to unseat Roy L. Hess.

Larry R. Skinner

SWORN TO AND SUBSCRIBED before me this 26 day of June, 1972.

Donald D. Pa
Notary Public

My Commission Expires: 8/4/72

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Jun 26 4 52 PM '72
CLERK CIRCUIT COURT
ESCAMBIA CO. FLA.

Case No. 72-1310

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared DONALD D PARKER, who, under oath, deposes and says:

This is to certify that I am Donald D Parker, age 25, and residing at 1215 Wyoming Ave, Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is DEPUTY SHERIFF and my senior supervisor or boss is SHERIFF ROYAL UNTREINER. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. ~~I intend to take an active part in James Russell Swinney, III's,~~ political campaign to be elected to the Florida Legislature and to unseat Roy L. Hess.

Donald D Parker

SWORN TO AND SUBSCRIBED before me this 25 day of June, 1972.

Notary Public

My Commission Expires: Sept 7 1974

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POOR COPY

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IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Case No. 72-1310

Jun 27 4 55 PM '72

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Charlie L. Strait, who, under oath, deposes and says:

This is to certify that I am Charlie L. Strait, age 58, and residing at [illegible] Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is [illegible] and my senior supervisor or boss is [illegible]. I desire to take an active part in political campaigns but am afraid to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for violation of the Civil Service law. I also desire to assist in favoring or opposing candidates for the Presidency of the United States, for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulate or seek signatures to petitions and I would like to distribute material or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and many others the feeling that my right to perform each and every one of the acts prohibited by Section 23 of the Civil Service Act of Escambia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons holding an office or place in the classified service. I intend to take an active part in [illegible] political campaign to be elected to the Florida Legislature [illegible]

Charlie L. Strait

SWORN TO AND SUBSCRIBED before me this 26th day of June, 1972.

Notary Public

My Commission Expires: 2/12/76

I Certify I delivered a copy of this Affidavit to Attorney, Wesley J. Mand this 26th day of June 72

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IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; et al,

Defendants.

Case No. 72-1260

JUN 23 4 15 PM '72

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, personally appeared Kenneth E. Glass, who, under oath, deposes and says:

This is to certify that I am Kenneth E. Glass, age 32, and residing at 2480 E. Burgess Road, Pensacola, Florida. I am a person holding an office or place in the classified service under the Civil Service Act of Escambia County, Florida. That position is Special Investigator and my senior supervisor or boss is James Ron Shelley. I desire to take an active part in political campaigns but am afr... to take any part in any political campaign because I might be dismissed by the Civil Service Board or criminally prosecuted for v...lation of the Civil Service law. I also desire to assist in favo...ing or opposing candidates for the Presidency of the United Stat..., for the Florida Legislature, and for County elective offices, including the Sheriff's office. I would like to be free to circulat... or seek signatures to petitions and I would like to distribute ...terial or pamphlets or badges favoring candidates for all offices, but I am afraid because I stand to lose my job or be prosecuted. I personally feel and share with James Russell Swinney, III, and ... others the feeling that my right to perform each and every one o... the acts prohibited by Section 23 of the Civil Service Act of Esc...bia County, Florida, is being suppressed. James Russell Swinney, III, represents me and many others on this question of common and general interest so vital to a substantial portion of persons hol...ing an office or place in the classified service. [redacted]

KENNETH E. GLESS

SWORN TO AND SUBSCRIBED before me this 23rd day of June, 1972.

Notary Public

My Commission Expires: 12-9-...

P-44

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APPENDIX C

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

JAMES RUSSELL SWINNEY, III individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,
Plaintiff

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM M. CHISOLM, WILLIAM G. CHAMPLIN, I. S. POWELL, J. L. TAYLOR, AND TED CIANO, as members of the Civil Service Board of Escambia County, Florida; CARL H. HARPER, County Solicitor of Escambia County, Florida; and REUBIN O'D. ASKEW, Governor of the State of Florida,
Defendants.

ORIG. REC. 625 PAGE 246

FINAL JUDGMENT

Case No. 72-1318

This cause came on to be heard on plaintiff's Motion for Summary Judgment. He has filed his sworn complaint and defendant, Royal J. Untreiner, Sheriff of Escambia County, Florida, and defendants William M. Chisolm, J. L. Taylor, William G. Champlin, I. S. Powell and Ted Ciano, as members of the Civil Service Board of Escambia County, Florida, have filed their answers to the complaint. The parties, by stipulation filed in the case, have agreed that all facts necessary for determination of the issue are now before the Court and this cause is ready for final judgment. Briefs were filed and the Court has considered the matter and being otherwise fully informed in the premises, finds:

Plaintiff, James Russell Swinney, III, individually, and on behalf of a class of persons known as the Civil Service Employees of Escambia County, Florida, has filed his complaint praying for a declaration that Chapter 67-1310, F.S. 1967, is unconstitutional. He claims that Section 23 of the Act, and Section 23.1 of the Rules of the Escambia County Civil Service Board based upon the Act, are unconstitutional in that provisions in said Section 23 of the Act,

EXHIBIT 3

A-95

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and Section 23.1 of the Rules, are an unjustified and unconstitutional encroachment on his right to free speech guaranteed to him under the First Amendment to the United States Constitution.

Section 23, Chapter 67-1370, Florida Statutes, 1967, provides:

> "No person holding an office or place in the classified service under the provisions of this act shall seek elective public office, or serve in any elective or appointive position in any political party, or take an active part in any political campaign, or serve as an officer or a member of a committee of any political club or organization, or circulate or seek signatures to any petition provided for in any primary or election law or act as a worker at the polls, or distribute badges, colors, or indicia favoring or opposing a candidate for election or nomination to a federal, state, county or municipal public office, provided, however, that nothing in this act shall be construed to prohibit or prevent any such officer or employee from becoming or continuing to be a member of a political club or organization, or from attendance upon political meetings, or from enjoying entire freedom from all interference in casting his vote.
>
> Any person violating the provisions of this section shall be dismissed from the service of the county."

FILED 625 PG 247

Section 23, Rules of the Escambia County, Florida, Civil Service Board, adopted pursuant to the Civil Service Act, Chapter 67-1370, F.S., 1967, provides as follows:

> "23.1 All employees holding positions in the classified service are governed by the provisions of the corresponding Section of the Act, relating to elective office and political activity."

Amendment 1 of the Constitution of the United States provides in pertinent part:

> "Congress shall make no law ... abridging the freedom of speech ... and to petition the government for a redress of grievances."

The plaintiff has been a deputy sheriff since 1965. He is a person holding a place in the classified service under the provisions of the Act in question. Plaintiff says he wants to do the following things.

but is prevented from doing so by the Act:

625 PAGE 248

1. Seek elective public office;

2. To take an active part in forthcoming political campaigns;

3. To serve as a member of a committee of a political club;

4. To circulate and seek signatures to petitions in forthcoming elections;

5. To distribute badges, colors, or other indicia favoring a particular candidate for election to the Presidency of the United States;

6. To distribute badges, colors, or other indicia favoring or opposing candidates for election in county and municipal offices;

The plaintiff further alleges that he has in the past, at the request of police officers of the City of Pensacola, read and reviewed for them a list of candidates that the policemen felt were favorable to their position and has handed the list to several members of the public. He says he was promptly and unnecessarily called to account by the Sheriff of Escambia County. He further says that the Supervisor of Elections of Escambia County, Florida, has indicated that he, the Supervisor of Elections, will refuse to permit the plaintiff to file for qualification for office because the plaintiff holds a place in the classified service.

The plaintiff says he fears that if he wilfully seeks public office, or does any of the things he desires to as listed above, that he will be prosecuted and found guilty of a misdemeanor and punished, all according to Section 18, Chapter 67-1370, F.A., 1967, which section classifies any actions of this sort as a misdemeanor. The previous action of this Court puts to rest the plaintiff's fears on this score. The Court order of June 1, 1972, declared Section 18 of the Act unconstitutional, and such action will be confirmed in this final judgment.

The plaintiff's complaint is that the Act, and the Rules under the Act, are constitutionally overbroad and in conflict with his First Amendment rights to free speech. He claims that the questioned provisions regulate in sweeping terms an area clearly beyond the range

of compelling governmental interests and are overbroad so that they "exert a chilling effect" on his exercise of fundamental rights. He also claims that the prohibitions contained in the Act are impermissibly vague and uncertain and constitutionally invalid under the First and Fifth Amendments to the United States Constitution. FT 625 PG 240

Plaintiff alleges more, but the gist is the same, i.e., that the Florida Legislature has attempted to forfeit his constitutional rights by conditioning his public employment upon the surrender of his said constitutional rights.

The complaint presents a justiciable issue and the Court will enter the declaratory judgment.

This Court concludes that Section 23, Chapter 67-1370, Laws of Florida, 1967, and Rule 23.1 of the Escambia County Civil Service Board, are valid against the plaintiff's challenge on constitutional grounds.

In United Public Workers of America v. Mitchell, 330 U.S. 75, 67 S. Ct. 556, 91 L.Ed. 754 (1947), the United States Supreme Court held the Hatch Act valid and constitutional against a similar attack. That holding by the U.S. Supreme Court is still valid, although as pointed out by plaintiff's able counsel, it has been somewhat eroded by other decisions by that same Court and by other courts whose decisions are not binding on this Court.

A recent decision by a three judge Federal Court in our own Federal District has upheld the Florida "resign to run" law against an attack alleging abridgment of freedom of speech. Stack v. Adams, 315 F. Supp. 1295 (N.D. Fla., 1970). The Federal Court struck down the Statute as applied to the plaintiff on other grounds. But, see Doob v. Adams, 315 F. Supp. 1299 (N.D. Fla., 1970) where the Court dismissed plaintiff's action challenging the same "resign to run" law. The Court held that a state requirement to resign in order to run for another State office does not violate one's rights to freedom of speech and expression, equal protection or to due process.

POOR COPY

In support of his position the plaintiff cites a Florida Supreme Court case, City of Miami v. Sterbens, 203 So. 2nd 4 (Fla. 1967). A close reading of that case more aptly supports the defendants' position. In that case, a member of the classified service of the City of Miami sought to be a candidate for public office in face of the following provisions of the Charter of the City of Miami, Section 69, Chapter 10847, Laws of Florida, Acts of 1925: 625 mu 250

> "... No officer or employee of the City shall directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or any political purpose whatever. No person holding a position in the classified service shall take part in political management or affairs or in political campaigns further than to cast his vote or express privately his opinions."

The Florida Supreme Court said,

> "... We have simply held that the particular language of the quoted statute is not sufficiently definitive to effect a prohibition against candidacy for public office by an employee in the classified service. A reasonably specific statute may well produce a different result." (emphasis supplied).

The Civil Service Act in question here is more specific than that cited in the Sterbens case, supra. The Act flatly prohibits a person in the classified services of Escambia County, Florida, from seeking public office. The balance of the prohibitions are well defined and set out in full. There should be no doubt about what constitutes prohibited political activity under the Act.

The Act, and the Rules adopted thereunder, are constitutional; therefore, it is

ORDERED and ADJUDGED:

1. That this Court takes jurisdiction of this matter.

2. That the Plaintiff, individually and collectively, represents all persons who filed affidavits in his and their own behalf.

3. That Section 18, Chapter 67-1370, Florida Statutes, 1967, which classifies violations of this Act as misdemeanors, is unconstitutional and a violation of Article III, Section 11 of the Florida Constitution which provides that

OFFICIAL RECORD 625 PAGE 251

> "... (a) There shall be no special law or general law of local application pertaining to: ... (4) punishment for crime..."

4. That Section 23, Chapter 67-1370, Florida Statutes, 1967, and Rule 23.1 of the Escambia County, Florida, Civil Service Board adopted pursuant to said Act, are constitutional and are not in contravention of the Florida and the United States Constitutions.

5. That any other relief prayed for by the Plaintiff are moot in light of the above declarations by the Court.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida, this 17th day of July, 1972.

William [illegible]
CIRCUIT JUDGE

July 17, 1972
[illegible] CONDS OF
[illegible] IN THE
[illegible] CIRCUIT COU[illegible]
BY: [illegible]
DEPUTY CLERK

APPENDIX D

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTHEINER, Sheriff of Escambia County, Florida; WILLIAM H. CHISOLM, WILLIAM G. CHAMPLIN, I. S. POWELL, J. L. TAYLOR, and TED CIANO, as members of the Civil Service Board of Escambia County, Florida; CARL H. HARPER, County Solicitor of Escambia County, Florida; and REUBIN O'D. ASKEW, Governor of the State of Florida,

Defendants.

OFFICIAL RECORD 625 PAGE 694

Case No. 72-1310

5 U 1 7 5 6

NOTICE OF APPEAL

The Plaintiff, JAMES RUSSELL SWINNEY, III, takes and enters his appeal to the Florida Supreme Court to review the final judgment of the Circuit Court of the First Judicial Circuit in and for Escambia County, Florida, bearing date of the 17th day of July, 1972, rendered on the 17th day of July, 1972, and recorded in Order and Judgment Book No. _____ at Page _____ on the _____ day of July, 1972. The nature of the order appealed from is a final summary judgment against the Plaintiff. All parties to said cause are called upon to take notice of the entry of this appeal.

I HEREBY CERTIFY that a true copy of the foregoing was furnished by U.S. Mail to R. H. Merritt, Esquire, 105 Lawyers Building, 314 South Baylen Street, Pensacola, Florida; Hobart O. Worley, Jr., Esquire, 334 Brent Building, Pensacola, Florida; and Carl H. Harper, Esquire, County Solicitor, Court of Record Building, Pensacola, Florida, this 17th day of July, 1972.

Paul Schmidt, JR.
for the Corporation
317 North Baylen Street
Pensacola, Florida

FILED July 17, 1972
AND RECORDED IN THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA, ON THE DATE AND TIME NOTED ABOVE.
JOE H. FLOWERS, CLERK CIRCUIT COURT
BY: Linda James
DEPUTY CLERK

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IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM M. CHISOLM, WILLIAM G. CHAMPLIN, I. S. POWELL, J. L. TAYLOR, and TED CIAMO, as members of the Civil Service Board of Escambia County, Florida; CARL H. HARPER, County Solicitor of Escambia County, Florida; and REUBIN O'D. ASKEW, Governor of the State of Florida,

Defendants.

Case No. 72-[illegible]10

ASSIGNMENTS OF ERROR

The Plaintiff, JAMES RUSSELL SWINNEY, III, by his undersigned attorney assigns as error to be asserted and relied upon by him on his appeal heretofore entered in this cause the following judicial acts of the above-styled court:

1. The court erred on July 17, 1972, in declaring Section 23, Chapter 67-1670, Florida Statutes 1967, and Rule 23.1 of the Escambia County, Florida, Civil Service Board constitutional and not in contravention of any provision of the United States Constitution.

2. The court erred on July 17, 1972, and on June 1, 1972, in dismissing Carl H. Harper, Esquire, County Solicitor of Escambia County, Florida, as a party not proper and necessary.

3. The court erred on July 17, 1972, in denying any relief prayed for by the Plaintiff including injunctive relief sought by Plaintiff's motion to alter or amend order, said motion filed June 9, 1972.

4. The court erred on July 17, 1972, in entering the final judgment of July 17, 1972, recorded in Circuit Court Order and Judgment Book No. _____ at Page _____ on the _____ day of July, 1972.

I HEREBY CERTIFY that a true copy of the foregoing was

EXHIBIT 4

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furnished by U.S. Mail to R. H. Merritt, Esquire, 105 Lawyers Building, 314 South Baylen Street, Pensacola, Florida; Hobart O. Worley, Jr., Esquire, 334 Brent Building, Pensacola, Florida; and Carl H. Harper, Esquire, County Solicitor, Court of Record Building, Pensacola, Florida, this 18th day of July, 1972.

Paul Shimek, Jr.
For the Corporation
517 North Baylen Street
Pensacola, Florida

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, STATE OF FLORIDA

JUL 21 4 25 PM '72
CLERK CIRCUIT COURT
PENSACOLA, FLA.

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM M. CHISOLM, WILLIAM G. CHAMPLIN, I. S. POWELL, J. L. TAYLOR, and TED CIAMO, as members of the Civil Service Board of Escambia County, Florida; CARL H. HARPER, County Solicitor of Escambia County, Florida; and REUBIN O'D. ASKEW, Governor of the State of Florida,

Defendants.

ORB 626 PAGE 675

Case No. 72-1310

AMENDED NOTICE OF APPEAL

The Plaintiff, JAMES RUSSELL SWINNEY, III, takes and enters his appeal to the Florida Supreme Court to review the final judgment of the Circuit Court of the First Judicial Circuit in and for Escambia County, Florida, bearing date of the 17th day of July, 1972, rendered on the 17th day of July, 1972, and recorded in Official Record Book 625 at Pages 246, 247, 248, 249, 250, and 251 of the public records of Escambia County, Florida, on the 18th day of July, 1972. The nature of the order appealed from is a final summary judgment against the Plaintiff. All parties to said cause are called upon to take notice of the entry of this appeal.

This amended notice of appeal this date is filed to avoid the penalty imposed by the Florida Supreme Court in Monger v. State of Florida, 249 So.2d 433 (1971).

I HEREBY CERTIFY that a true copy of the foregoing was furnished by delivery to R. H. Merritt, Esquire, 105 Lawyers Building, 314 South Baylen Street, Pensacola, Florida; Hobart O. Worley, Jr., Esquire, 334 Brent Building, Pensacola, Florida; and Carl H. Harper, Esquire, County Solicitor, Court of Record Building, Pensacola, Florida, this 21st day of July, 1972.

FILED July 21, 1972
RECORDED IN THE PUBLIC RECORDS OF
ESCAMBIA COUNTY, FLORIDA, IN THE
CASE STYLED AS INDICATED ABOVE.
JOE A. FLOWERS, CLERK CIRCUIT COURT
BY [illegible] DEPUTY CLERK

Paul Shimek, Jr.
For the Corporation
517 North Baylen Street
Pensacola, Florida

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APPENDIX E

[illegible] TRIAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF [illegible] DETERMINED.

FT 677 PAGE 346

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1973

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service Employees of Escambia County, Florida,

Appellants,

-vs-

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM H. CHISOLM, WILLIAM G. CHAMPLIN, I. S. POWELL, J. L. TAYLOR, and TED CIANO, as members of the Civil Service Board of Escambia County, Florida; and CARL H. HARPER, County Solicitor of Escambia County, Florida,

Appellees.

CASE NO. 42,594

Opinion filed January 22, 1973

An Appeal from the Circuit Court of Escambia County, William Fryo, III, Judge

Paul Shimek, Jr., for Appellants

Hobart O. Worley, Jr., for Civil Service Board; and Richard H. Merritt, for Sheriff Royal J. Untreiner, Appellees

BOYD, J.

This cause is before us on appeal from the Circuit Court, Escambia County. The trial court in its final judgment passed on the validity of §§18 and 23 of Chapter 67.1370, Laws of Florida, 1967, the Escambia County Civil Service Act, giving this Court jurisdiction of the direct appeal under §4 of Article V of the Florida Constitution. The pertinent sections of the Act are as follows:

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> Section 23: "No person holding an office or place in the classified service under the provisions of this act shall seek elective public office, or serve in any elective or appointive position in any political party, or take an active part in any political campaign, or serve as an officer or a member of a committee of any political club or organization, or circulate or seek signatures to any petition provided for in any primary or election law or act as a worker at the polls, or distribute badges, colors, or indicia favoring or opposing a candidate for election or nomination to a federal, state, county or municipal public office, provided, however, that nothing in this act shall be construed to prohibit or prevent any such officer or employee from becoming or continuing to be a member of a political club or organization, or from attendance upon political meetings, or from enjoying entire freedom from all interference in casting his vote.
>
> "Any person violating the provisions of this section shall be dismissed from the service of the county."

The constitutionality of the foregoing statute was upheld by the trial court against the contentions of appellants that it was overbroad, thereby "exerting a chilling effect" on the exercise of fundamental rights. Appellants also contend that the Act is invalid because vague and uncertain in violation of due process and equal protection as guaranteed by the First and Fifth Amendments to the United States Constitution.

The other section of the Act under attack, Section 18, is as follows:

> "Any person who shall willfully violate any of the provisions of this act, or of the rules of the board, shall be guilty of a misdemeanor, and shall on conviction thereof, be punished as provided by law."

The foregoing section of the Act was held unconstitutional by the trial court on the grounds that it violates Article III, §2 of the Florida Constitution which provides:

> "* * * (a) There shall be no special law or general law of local application pertaining to: . . . (4) punishment for crime. . . . "

None of the parties to the appeal here have challenged the holding of the trial court with regard to §18 of the Act. However, in view of the importance of this constitutional ruling, which was part of

the judgment below, we have undertaken to review, and do hereby affirm, that portion of the trial court's order striking §18 of the Act as unconstitutional.

In addition to the grounds of unconstitutionality set forth by the trial court in its opinion, which we quoted above, we note that §18 of the Act undertakes to impose criminal sanctions for political activity. This is quite another thing from the traditional Hatch Act, which curtails political activity in Civil Service employees on penalty of being discharged from public employment. The imposition of criminal penalties goes beyond what is necessary to insure the public interest in an impartial Civil Service and infringes on the rights of the individual.

We also affirm the holding of the trial court that §23 of the Escambia County Civil Service Act is constitutional and valid. In United Public Workers v. Mitchell,[1] the United States Supreme Court upheld the constitutionality of the Hatch Act,[2] a Federal Act prohibiting officers and employees in the

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[1] 330 U. S. 75 (1947).

[2] Formerly 5 U.S.C. §118i, now 5 U.S.C. §7324. The present act provides in part: "(a) An employee in an Executive agency or an individual employed by the government of the District of Columbia may not -- (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or (2) take an active part in political management or in political campaigns. For the purpose of this subsection, the phrase 'an active part in political management or in political campaigns' means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

"(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates."

executive branch of the Federal Government, with certain exceptions, from taking "any active part in political management or in political campaigns." In upholding the Act, the United States Supreme Court stated:[3]

> "The provisions of § 9 of the Hatch Act and the Civil Service Rule 1 are not dissimilar in purpose from the statutes against political contributions of money. The prohibitions now under discussion are directed at political contributions of energy by Government employees.
>
> "These contributions, too, have a long background of disapproval. Congress and the President are responsible for an efficient public service. If, in their judgment, efficiency may be best obtained by prohibiting active participation by classified employees in politics as party officers or workers, we see no constitutional objection.
>
> "Another Congress may determine that, on the whole, limitations on active political management by federal personnel are unwise. The teaching of experience has evidently led Congress to enact the Hatch Act provisions. To declare that the present supposed evils of political activity are beyond the power of Congress to redress would leave the nation impotent to deal with what many sincere men believe is a material threat to the democratic system.
>
> "When actions of civil servants in the judgment of Congress menace the integrity and the competency of the service, legislation to forestall such danger and adequate to maintain its usefulness is required. The Hatch Act is the answer of Congress to this need. We cannot say with such a background that these restrictions are unconstitutional."

In the companion case of State of Oklahoma v. U. S. Civil Service,[4] decided the same day as Mitchell, the United States Supreme Court upheld the constitutionality of the provision under the Hatch Act that:

> "No officer or employee of any State or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or by any Federal agency shall . . . take any active part in political management or in political campaigns. . . ."

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[3] 330 U.S. 75, 98, 100 (1947).

[4] 330 U. S. 127 (1947).

The Mitchell and Oklahoma cases have not been overruled and the Hatch Act continues to be enforced.[5]

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[5] Northern Virginia Regional Park Authority v. U. S. Civil Service Commission, 437 F.2d 1346 (C.A. 4th), cert. den. 403 U.S. 936 (1971), (ran for, and was elected to, State House of Delegates);

Kearney v. Macy, 409 F.2d 847, 848 (C.A. 9th 1969): "In our opinion, that case [Mitchell] insofar as it deals with an employee of the United States government such as appellant Kearney, and with a violation of the Hatch Act of the type that Kearney was found to have committed, has not been overruled either expressly or by implication by subsequent decisions of the Supreme Court of the United States." Cert. den. 397 U.S. 943 (1970);

Jarvis v. U. S. Civil Service Comm., 382 F.2d 339 (C.A. 6th 1967), (solicited political contributions for Democratic Party Fund Raising Dinner Committee);

In re Higginbotham, 340 F.2d 165 (C.A. 3rd), cert. den. 382 U.S. 385 (1965), (ran for, and was elected, alderman in municipality);

Palmer v. U. S. Civil Service Comm., 297 F.2d 450 (C.A. 7th), cert. den. 369 U.S. 849 (1962), (Precinct committeeman and Chairman of County Republican Committee);

State of Utah v. U. S., 286 F.2d 30 (C.A.10th), cert. den. 366 U. S. 918 (1961), (fund raising for the Republican Party);

Fishkin v. U. S. Civil Service Comm., 309 F.Supp. 40 (D.C.N.D. Calif. 1969), appeal dismissed for failure to timely docket case, 396 U.S. 278 (1970), (became candidate for Member of County Central Committee and served as a Director of State Federation of Young Democrats);

Osheim v. U. S. Civil Service Comm., 299 F.Supp. 317 (D.C. Wisc. 1969), (held organizational Democratic Party meeting, was elected alternate delegate of Ward Unit of Party and Chairman of Membership Committee);

In re Ramshaw, 266 F.Supp. 73 (D.C. Idaho 1967), (candidate for Sheriff);

Democratic State Central Committee v. Andolsek, 249 F. Supp. 1009 (D.C.D. Md. 1966), (Democratic candidate for county council and persons desiring to actively campaign for him);

Engelhardt v. U. S. Civil Service Comm., 197 F.Supp. 806 (D.C.M.D. Ala. 1961), aff'd. 304 F.2d 882 (C.A. 5th 1962), (chairman of State Democratic Executive Committee);

Smyth v. U. S. Civil Service Comm., 291 F.Supp. 568 (D.C. Wisc. 1968), (ran on Republican ticket for office of county clerk).

On June 21, 1971, the United States Supreme Court denied certiorari in the case of Northern Virginia Regional Park Authority v. U. S. Civil Service Commission.[6] The opinion of the United States Court of Appeals, Fourth Circuit,[7] in that case is of particular interest because it considers and rejects the contention that the Mitchell and Oklahoma cases are no longer valid. The same contention is made by the appellants in the case before us. The Virginia Park Authority case upholds the dismissal under the Hatch Act of a state employee of a federally funded agency who campaigned for, and was re-elected to, the Virginia House of Delegates. The Court of Appeals, Fourth Circuit, in affirming the dismissal of the employee, states:[8]

> "The appellants in this case assert that a series of Supreme Court opinions since 1947 have undermined the rationale of Mitchell and Oklahoma, and these decisions should no longer be followed. * * * The appellants emphasize that standards for reviewing statutes abridging the exercise of First Amendment freedoms have changed dramatically since 1947, and that statutes are now subjected to closer judicial scrutiny to determine whether the interests of the Government are compelling, and whether the objectives of the legislation can be accomplished by narrower, less drastic means. * * * According to the appellants, the Hatch Act cannot survive contemporary review under these more rigorous constitutional standards. Their position, in brief, is that Justice Black's dissent in Mitchell reflects the now prevailing viewpoint of the Supreme Court.
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> * * *
>
> "In the case at hand, the appellants have cited no Supreme Court case since 1947 dealing specifically either with the Hatch Act or other federal or state legislation involving the identical issue that would justify this court in contradicting the controlling Supreme Court authorities. It is highly relevant that other federal courts have in recent adjudications felt similarly constrained by the decisions of Mitchell and Oklahoma when constitutional challenges to the Hatch Act have been presented on essentially the same grounds urged here. * * * Conceivably, if the Supreme Court were to make a fresh evaluation of the constitutionality of the Hatch Act today, it might

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[6] 403 U.S. 936 (1971): "Certiorari denied. Mr. Justice Douglas is of the opinion that certiorari should be granted."

[7] Northern Virginia Regional Park Authority v. U. S. Civil Service Comm., 437 F.2d 1346 (C.A. 4th 1971).

[8] Id. at 1349, 1350-51.

depart from the result it reached in 1947. Our holding is dictated, however, by our duty to give effect to an existing Supreme Court ruling on the precise issue before us. Mitchell and Oklahoma do not speak merely in the general area of First Amendment rights, from which one would be left to infer what the Court would think about the constitutionality of the Hatch Act. These two cases speak plainly and directly to the validity of the Hatch Act itself, leaving nothing to inference or speculation."

The highest court of the land has had numerous opportunites since the Mitchell and Oklahoma cases in 1947 to reconsider the constitutionality of the Hatch Act. Most recently in the Virginia Regional Park Authority case, supra, the question was squarely presented and certiorari was denied.

We are aware of, but not persuaded by, decisions of other state courts[9] cited by appellants and expressing the view that the Mitchell and Oklahoma cases are outdated. We are also aware that the lower federal courts are not in complete agreement on this question.[10] The great majority of the lower federal courts,[11] however, continue to abide by the Mitchell and Oklahoma cases.

The Florida Act here in question[12] is similar in purpose but more specific in language than the Hatch Act. In National Association of Letter Carriers v. U. S. Civil Service Commission, decided July 31, 1972,[13] the United States District Court of the District of Columbia, held that Section 15 of the Hatch Act, the definitional section, was unconstitutionally vague and overbroad. That section is as follows:

". . . the phrase ' an active part in political management or in political campaigns' means those

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[9] Fort v. Civil Service Comm., 392 P.2d 385 (Calif.1964); Miniolly v. Oregon, 411 P.2d 69 (1966); See also: Bagley v. Washington Township Hospital District, 421 P.2d 409 (Calif.1966).

[10] Mancuso v. Taft, 341 F.Supp. 574 (D.C.R.I. 1972); Nat'l Asso. of Letter Carriers, AFL-CIO v. U. S. Civil Service Comm., 346 F.Supp. 578 (D.C.D.C. 1972).

[11] See cases cited footnote 5, supra; 8 A.L.R.Fed. 343 (1971).

[12] Laws of Florida, §23, Chapter 67-1370 (1967).

[13] 346 F.Supp. 578 (D.C.D.C. 1972).

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> acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under rules prescribed by the President. § 7324 (a). "

In striking Section 15 of the Hatch Act, the District Court noted that the definition of "active part in political management or in political campaigns,' is ambiguous because it incorporates by reference over 3,000 rulings made by the Civil Service Commission between 1886 and 1940, covering many types of conduct. As yet it is too soon to know how the National Association of Letter Carriers case, a 2-1 decision, will fare on appeal.

By comparison with the Federal Act, the Florida Statute is a masterpiece of clarity, setting out specifically the prohibited political activities. The Act under consideration also differs significantly from the Act held invalid for ambiguity in City of Miami v. Sterbenz.[14] We agree with the learned trial judge's holding in the instant case regarding the Sterbenz decision, as follows:

> "The Civil Service Act in question here is more specific than that cited in the Sterbenz case, supra. The Act flatly prohibits a person in the classified services of Escambia County, Florida, from seeking public office. The balance of the prohibitions are well defined and set out in full. There should be no doubt about what constitutes prohibited political activity under the Act."

The Pendleton Act of 1883 brought into existence the non-political civil service system for employees. The system operates to protect the public, as well as governmental employees, from the "spoils system" under which public office was made the reward for political work. The same considerations prompted the adoption of the Hatch Act and its counterparts in the various states.[15]

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[14] 203 So.2d 4 (Fla. 1967).

[15] 28 A.L.R. 2d 717 (1969).

The purposes of the Hatch Act prohibition against political activity by a civil service employee were considered in Fishkin v. U. S. Civil Service Commission, as follows:[16]

> "The governmental interest upheld by the Court in Mitchell and Oklahoma fully apply to the facts of the present case. Fishkin's conduct could (a) undermine public confidence by inducing a public belief that the Contra Costa County Social Service Department engaged in partisan political activity and made decisions on that basis, (b) undermine the position of Fishkin's supervisor, especially regarding actions taken with respect to Fishkin, (c) undermine the morale of fellow employees by leading them to believe that their own political views might affect the quality and quantity of the services that Fishkin is supposed to provide for them,[17] and (d) lead to political pressures on Fishkin himself."

If the reasons for the existence of laws such as the one under consideration are no longer valid then the legislative branches of the Federal and State Governments should repeal them. This Court's function is to determine the constitutionality, not the wisdom or necessity, of a legislative enactment. Our conclusion that §23, Chapter 67-1370, Laws of Florida, is constitutional is supported by the decisions of the United States Supreme Court in the Mitchell and Oklahoma cases, supra, as well as by a long line of federal decisions upholding and enforcing the Hatch Act. That Federal Act is considerably broader than the Florida Act.

Accordingly, the judgment of the trial court is affirmed.

It is so ordered.

CARLTON, C.J., ROBERTS, ADKINS and McCAIN, JJ., Concur
ERVIN, J., Dissents with Opinion

[16] 309 F.Supp. 40, 45 (D.C.N.D. Calif. 1969).

[17] The employee, Fishkin, was an administrative analyst with the Contra Costa County Social Service Department. His job was to arrange for office space, desks and telephones for use by social workers. While so employed, he became a candidate for Member of County Central Committee, Third Supervisional District in the Democratic Primary election and also served as Regional Director of the California Federation of Young Democrats.

ERVIN, J., dissenting:

The issue in this appeal is the constitutionality of Section 23, Chapter 67-1370, Laws of Florida 1967, an act establishing the Escambia County Civil Service Syste. The section provides:

> "No person holding an office or place in the classified service under the provisions of this act shall seek elective public office, or serve in any elective or appointive position in any political party, or take an active part in any political campaign, or serve as an officer or a member of a committee of any political club or organization, or circulate or seek signatures to any petition provided for in any primary or election law or act as a worker at the polls, or distribute badges, colors, or indicia favoring or opposing a candidate for election or nomination to a federal, state, county or municipal public office, provided, however, that nothing in this act shall be construed to prohibit or prevent any such officer or employee from becoming or continuing to be a member of a political club or organization, or from attendance upon political meetings, or from enjoying entire freedom from all interference in casting his vote.
>
> "Any person violating the provisions of this section shall be dismissed from the service of the county."

In May 1972 Appellant Swinney, an Escambia County deputy sheriff, individually and on behalf of the County's civil service employees, filed a complaint for declaratory and injunctive relief contending the section unconstitutionally abridges First Amendment rights by proscribing participation in many political activities. Specifically, Swinney said in his complaint that the section was keeping him from doing the following in that election year: running for public office, taking an active part in political campaigns and serving as a member of a committee of a political club, circulating and seeking signatures to petitions; distributing badges, colors, or other indicia favoring George C. Wallace as a candidate for election to the Presidency of the United States, and distributing badges, colors, or other indicia favoring or opposing candidates for election in county and municipal offices.

On July 19, 1972, the Escambia County Circuit Court held the section constitutional; Swinney appealed to this Court and waived oral argument. Immediately thereafter, the Sheriff suspended him and recommended to the County's Civil Service Board that he be dismissed for actively campaigning for a seat in the Florida Legislature. A month later the Civil Service Board of Escambia County ordered the dismissal, but reserved jurisdiction over the matter pending this Court's decision as to the constitutionality of Section 23.

I would reverse the trial court.

Participation in political activities is an integral part of United States citizenship. Sweezy v. New Hampshire, 1957, 354 U.S. 234; Fort v. Civil Service Com'n of County of Alameda, 1964, 38 Cal. Rptr. 625, 392 P.2d 385. It has been called "a fundamental principle of a democratic society and . . . the premise upon which our form of government is based." Fort v. Civil Service Com'n, supra at 392 P.2d 387. It is insured by the United States Constitution's First Amendment freedoms of speech and association, Sweezy v. New Hampshire, supra; Fort v. Civil Service Com'n, supra; Minielly v. State, Ore.1966, 411 P.2d 69, and their counterparts in the Florida Constitution, Sections 45 and 5 of Article I. It is a broad term, encompassing such varied activities as running for public office, campaigning either for oneself or for another, discussing political issues and candidates, attending political meetings, placing bumper stickers on cars, and voting. Without it, our open and free electoral system cannot survive.

Chapter 67-1370, Section 23, Laws of Florida 1967, clearly places limitations on political participation and therefore on the First Amendment freedoms of speech and association. Such restraints

are constitutionally permissible, but only if it is shown they are necessary to protect "compelling state interests." NAACP v. Button, 1963, 371 U.S. 415, 438; Sherbert v. Verner, 1963, 374 U.S. 398, 406. Furthermore, laws limiting First Amendment freedoms must deal only with those areas in which there are compelling state interests justifying regulation; if they prohibit conduct both within and without the area of interest, they are unconstitutionally overbroad. Keyishian v. Board of Regents, 1967, 385 U.S. 589; Mancuso v. Taft, D.C.R.I. 1972, 341 F. Supp. 574, 579.

Under the above rules, Section 23 of Chapter 67-1370, Laws of Florida 1967, is unconstitutional. Some political restraints on civil servants can be justified. We feel legitimate state interests may be protected by laws preventing government employees from campaigning during working hours, using their positions to influence or coerce others ; however, we have been shown no compelling state interest necessitating a law preventing all Escambia County civil servants from taking any active part in any political campaign at any level and at any time. Section 23, as it is now written, should not stand. Compare City of Miami v. Sterberg, Fla., 203 So.2d 4.

The trial court and the Appellees in this cause have relied upon United Public Workers of America v. Mitchell, 1947, 330 U.S. 75, which upheld the Hatch Act's restrictions on federal employees' political activities. We feel Mitchell has been superseded by the more thoughtful rationale of subsequent decisions of the Supreme Court of the United states regarding regulation of First Amendment rights. Others share this conclusion. Minielly v. State, supra;

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Bagley v. Washington Township Hospital District, 1966, 55 Cal. Rptr. 401, 421 P.2d 409; Fort v. Civil Service Com'n of County of Alameda, supra; Kinnear v. City and County of San Francisco, 1964, 38 Cal. Rptr. 631, 392 P.2d 391; Mancuso v. Taft, supra; DeStefano v. Wilson, Super. Ct. 1967, 96 N.J. Super. 592, 233 A.2d 682; National Association of Letter Carriers, AFL-CIO v. United States Civil Service Commission, U.S.D.C. civil case No. 57771, opinion filed July 31, 1972; Gray v. Hillsborough County, Fla., 13th Cir., case No. 204302, order filed June 6, 1972.

In holding Section 23 unconstitutional and Mitchell no longer viable, we should expressly overrule Jones v. Board of Control, Fla.1961, 131 So.2d 713, where we held constitutional a rule of the Board of Control of the University of Florida prohibiting employees of the University from running for public office. Jones, which relied in part upon Mitchell, was rendered prior to the Supreme Court of the United States landmark First Amendment cases of the 1960's and 1970's. In light of those decisions, Jones should no longer stand.

Public employees in the various hierarchies of bureaucratic employment of the federal and state governments ought not to be classed as political eunuchs sterilized from common political privileges by Hatch Acts, big or little. There is small reason to treat them differently from other citizens in businesses or professions or holding elective office. They should not be regarded as sheep in political pastures too tender and innocent to engage in democratic processes. As part-citizens they are not allowed to break out of

BOOK 677 PAGE 359

the bureaucratic fold and enjoy full political rights. The present restrictive acts stifle public employees' political ambitions and keep them below the political surface in hierarchal bureaucratic catacombs, unable for the most part to escalate to levels of their highest public competence.

There may be good reasons for legally preventing public employees from being interfered with or coerced by their superiors in the enjoyment of political rights; but there are no logical compelling state interests or reasons for barring public employees from the fundamental rights other citizens enjoy in legitimate political activities. A public employee might be guilty of neglect of his regular public employment duties because of overindulgence in political activity, but such individualized conduct should be disciplined as any other neglect of employment duty and not made the the predicate for wholesale deprivation of political rights of all public employees as a class.

Much water has gone over the dam since the Hatch Act was upheld in Mitchell. The later federal First Amendment cases have given a renewed vitality to individual rights and as far as I can see the nation is better off for it in terms of a more viable democracy (not a mediocracy) with more citizens allowed to participate fully in electoral processes. We stagnate when we repress exercise of democratic rights; we breed anarchy when we deny equality of rights.

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Perhaps a better day is in sight for public employees—at least the Supreme Court of the United States has tentatively decided to look over the Federal Hatch Act again, despite Mitchell, in the case of National Association of Letter Carriers, AFL-CIO v. United States Civil Service Commission, U.S.D.C., civil case No. 57771, opinion filed July 31, 1972, probable jurisdiction being noted therein. 41 U.S. Law Week, 3330 (1972).

However, I think the Supreme Court of Florida on its own owes a duty now to correct deprivations of Florida citizens' political rights without waiting for the United States Supreme Court when our Court has a clear case and a fundamental duty in which to do so.

FILED [illegible] 1973
RECORDED IN THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA, IN THE BOOK AND PAGE NOTED ABOVE.
ERNIE LEE MAGAHA, CLERK CIRCUIT COURT
BY _____ DEPUTY CLERK

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FILED & RECORDED IN THE PUBLIC RECORDS OF ESCAMBIA CO. FLA. ON
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ERNIE LEE MAGAHA
CLERK CIRCUIT COURT
ESCAMBIA COUNTY

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1972

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,	:	
Appellants,	:	
-vs-	:	
ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM M. CHISOLM, WILLIAM G. CHAPLIN, I. S. POWELL, J. L. TAYLOR, and TED CIANO, as members of the Civil Service Board of Escambia County, Florida; and CARL H. HARPER, County Solicitor of Escambia County, Florida,	:	Case No. 42,594
Appellees.	:	

MOTION FOR REHEARING

COMES NOW the Appellant, JAMES RUSSELL SWINNEY, III, by his undersigned attorney, in accordance with the provisions of Rule 3.14, Florida Appellate Rules, moving for a rehearing on this Court's finding of final judgment of January 22, 1973, and as grounds therefor says as follows:

1. This Court on January 22, 1973, filed an opinion affirming the lower court's finding constitutional and valid § 23 of Chpater 67.1370, Laws of Florida 1967.

2. Appellant relied only on federal grounds in the trial court. The trial court on its own announced that § 23 was not in contravention with either the Florida or federal constitution thus both had to be raised before this Court.

3. Appellant asked this Court to rule on the federal grounds only and not on Florida constitutional grounds so as to avoid the possibility of a United States Supreme Court ruling that a Florida Supreme Court decision on this matter, rests on adequate state grounds requiring affirmance. See Monger v. Florida, 31 L.Ed.2d (1972).

4. In this Court's opinion handed down on January 22, 1973, Appellant in no way can discern whether this Court rules only on federal constitutional grounds, or state constitutional

EXHIBIT 6

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grounds, or both.

WHEREFORE, the undersigned moves for a rehearing for clarification of the Court's opinion solely as to the reliance on the United States Constitution.

I HEREBY CERTIFY that a true copy of the foregoing was furnished by U.S. Mail to Richard H. Merritt, Esquire, 105 Lawyers Building, 314 South Baylen Street, Pensacola, Florida, and Hobart O. Worley, Jr., Esquire, 334 Brent Building, Pensacola, Florida, this 2nd day of February, 1973.

Paul Shimek, Jr.
For the Corporation
PAUL SHIMEK, JR., P.A.
517 North Baylen Street
Pensacola, Florida

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MF 677 PAGE 366

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1973

WEDNESDAY, FEBRUARY 28, 1973

JAMES RUSSELL SWINNEY, III, ETC., ET AL.,

Appellants,

vs.

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida, ET AL.,

Appellees.

CASE NO. 43,594

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On consideration of the petition for rehearing filed by attorney for appellant,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

CARLTON, C.J., ROBERTS, ADKINS, BOYD and McCAIN, JJ., concur

ERVIN, J., dissents

532806

FILED AND RECORDED IN THE PUBLIC RECORDS OF ESCAMBIA CO. FLA. ON
Mar 7 8 30 AM '73
ERNIE LEE MAGAHA
CLERK CIRCUIT COURT

I HEREBY CERTIFY THAT THE FOREGOING WAS RECORDED IN THE PUBLIC RECORDS OF CAMBIA COUNTY, FLORIDA, IN THE BOOK AND PAGE NOTED ABOVE
ERNIE LEE MAGAHA, CLERK CIRCUIT COURT
BY _____ DEPUTY CLERK

A True Copy.
Test:
Ed J. White
Clerk Supreme Court.
By: _____

CC: Hon. Paul Shimek, Jr.
Hon. Robert O. Worley, Jr.
Hon. Richard H. Merritt
Hon. Joe A. Flowers, Clerk

(THE MANDATE HAS BEEN ISSUED AND MAILED TO THE CLERK CIRCUIT COURT, ESCAMBIA COUNTY, FLORIDA. THE RECORD, ONE VOLUME, HAS BEEN RETURNED TO THE CLERK.)

A-72

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APPENDIX F

Mandate from Supreme Court of Florida

OFFICIAL RECORDS BOOK 677 PAGE 345

To the Honorable, the Judges of the Circuit Court

for the County of Escambia of Florida. Greeting:

WHEREAS, Lately in the Circuit Court of

for the County of Escambia

in a cause wherein

JAMES RUSSELL SWINNEY, III, ETC.,
WAS

No. 72-1310

ROYAL J. UNTREINER, ETC., ET AL.,
WERE

plaintiff

and

defendant

the Judgment of said Circuit Court was rendered July 17, 1972

as by the inspection of the transcript of the record of the said Circuit Court

which was brought into the Supreme Court of the State of Florida, by virtue of an appeal

agreeably to the laws of said State in such case made and provided, fully and at large appears:

AND WHEREAS, at the January Term of said Supreme Court holden at Tallahassee,

A. D. 19 73, the said cause came on to be heard before the said Supreme Court on the said transcript of the record

and was argued by counsel; in consideration whereof, on the 22nd day January A. D. 19 73

the said Supreme Court rendered its opinion and judgment in said cause as per copy thereof hereto attached and

made a part hereof, case no. 42,594, petition for rehearing denied February 28,1973.

In Consideration Whereof, It Is Ordered by the Court that the appellees do have and recover of and from

the appellants except the $25 filing fee paid by appellants costs in this behalf expended herein, and that all other costs shall

be taxed in the court in which the appeal was entered, therefore,

YOU ARE HEREBY COMMANDED, That such further proceedings be had in said cause as according to right,

justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said

Judgment of the Circuit Court notwithstanding.

WITNESS, The Honorable Vassar B. Carlton

Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this

28th day February 19 73

Clerk Supreme Court of Florida.

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APPENDIX B

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY. CIVIL ACTION.

ROBERT I. GRAY,

Plaintiff

-vs-

HILLSBOROUGH COUNTY, FLORIDA, a political subdivision of the State of Florida, and THE CIVIL SERVICE BOARD OF HILLSBOROUGH COUNTY, FLORIDA, an agency of Hillsborough County, Florida,

Defendants

NO. 204302

DIVISION A

FILED

1972 JUN -6 PM 2:25

CLERK CIRCUIT COURT
HILLSBOROUGH COUNTY, FLA.

JUDGMENT

THIS CAUSE came on to be heard upon Motions for Summary Judgment filed by both Plaintiff and the Defendants. Present were counsel for both parties, together with the parties or their representatives. The Court received the briefs, annotations, summations of counsel and then took the matter under advisement in order to complete a study of the law and the authorities submitted.

Plaintiff, ROBERT I. GRAY, seeks a Declaratory Judgment and Permanent Injunction against Defendants as named in the style of the case.

Chapter 71-575, Laws of Florida, is an amendment of and to Chapter 69-1121, Laws of Florida. It provides, among other recitations, as follows:

> "Section 24. (a) No person holding an office or place in the classified service under the provisions of this act shall take an active part in a political campaign or circulate or seek signatures to any petition provided for by any primary or election law or act as a worker at the polls, or distribute badges, colors or insignia favoring or opposing a candidate for election or nomination to a federal, state, county or municipal public office, provided, however, that nothing in this act shall be construed to prohibit or prevent any such officer or employee from becoming or continuing to be a member of a political club or organization, or from attendance at political meetings, from enjoying entire freedom from all interference in casting his vote or from seeking or accepting election or appointment to public office, except as provided in subsection (b). Any person violating the provisions of this section shall be dismissed from the service of the county."

A-74

EXHIBIT 7

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-1-

Plaintiff is a classified employee of the County of Hillsborough and thus subject to the provisions of the above listed section of the statutory act. Plaintiff alleges various of his guaranteed freedoms and rights have been or will be denied him because of the named statutory act.

Throughout the nation today the bellicosity of many dissidents' braying about lost rights, while ignoring the rights of fellow beings, frequently causes an initial shuddering merely upon hearing the phrase. However, every right to which a person is entitled should be protected and guaranteed.

One is tempted to expound upon loss of freedoms and rights either pro or con. To do so in a legal opinion would only remove another freedom from the readers and/or those affected. Hence:

Plaintiff alleges the two chapters above-cited are too broad and restrictive, discriminative in application, vague, and thus improperly regulate a classified employee's freedom of speech, association, assembly and petition both under the United States Constitution and that of the State of Florida.

This Court agrees. (See Sherbert v. Warner, 374 U.S. 398; Keyishian v. Board of Regents, 385 U.S. 589; NAACP v. Button, 371 U.S. 415; Fort v. Civil Service Commission, 392 F2d, 385; Hobbs v. Thompson, 448 F2d, 456; Pickering v. Board of Education, 391 U.S. 563; City of Miami v. Sterbenz, 203 So.2d, 4)

Without doubt the Act is too broad, too restrictive and precludes a covered employee from exercising an American right which does not affect his work-a-day duties and responsibilities.

It is, therefore, ORDERED AND ADJUDGED that Section 24, Chapter 69-1121, Laws of Florida, as amended by Chapter 71-675, Laws of Florida, is unconstitutional, invalid and void under the 1st and 14th Amendments to the Constitution of the United States and Sections 4 and 5 of the State of Florida Constitution.

It is further ORDERED AND ADJUDGED that each of the defendants herein be and the same each hereby are enjoined from enforcing or executing the

provisions of Section 24 of the said Laws of Florida against the plaintiff or others similarly situated.

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida, this 6th day of JUNE, A. D. 1972.

ROGER D. FLYNN, CIRCUIT JUDGE

STATE OF FLORIDA,)
COUNTY OF HILLSBOROUGH)

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE IN MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL THIS..... DAY OF..... A.D.....19.....

JAMES P. TAYLOR, JR., CLERK

BY.....D.C.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO. 72-1316

JAMES RUSSELL SWINNEY, III, Individually and on behalf of a class of persons known as the Civil Service Employees of Escambia County, Florida,
Petitioner,

versus

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM M. CHISOLM, WILLIAM G. CHAMPLIN, I. S. POWELL, J. L. TAYLOR, and TED CIANO, as members of the Civil Service Board of Escambia County, Florida; and CARL H. HARPER, County Solicitor of Escambia County, Florida,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI FROM A DECISION OF THE SUPREME COURT OF FLORIDA

William M. Chisolm, William G. Champlin, I. S. Powell, J. L. Taylor and Ted Ciano, as members of and constituting the Civil Service Board of Escambia County, Florida pray that this Court will deny the Petition for Writ of Certiorari sought herein.

ISSUE PRESENTED

Whether this Court should review a decision of the Supreme Court of Florida which sustained upon the facts in evidence the constitutionality of Section 23, Chapter 67-1370, Laws of Florida 1967, a provision of the Escambia County Civil Service Act which prohibits certain political activities by classified employees, against the allegation that said provision violates Petitioner's rights under the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petitioner has set forth in his Appendix A (pp. A-1 A-4) the pertinent provisions of the Constitution of the United States and the provisions of Section 23, Chapter 67-1370, Laws of Florida 1967. The provisions of the various Laws of Florida cited herein to show the historical development of the present civil service system of Escambia County are not set forth at length in the Appendices attached hereto, but said laws are set forth by title only in Appendix A hereof.

STATEMENT OF THE CASE

These respondents adopt the statement of the case set forth in the petition, except such matters alleged which are conclusions of law and except in the following other important particulars:

1. The case proceeded to summary final judgment in the Circuit Court of Escambia County, Florida upon the Stipulation of the parties (See: Appendix B to this Brief) that all facts necessary for determination of the

issues were before the Court by affidavit or sworn complaint. Therefore, no evidence was before the Court except as set forth in the original complaint sworn to by Petitioner Swinney (See: Petitioner's Appendix B, pp. A-5 through A-16) and the various form affidavits of members of the class who Petitioner Swinney claimed to represent in the class action. (See: Petitioner's Appendix B, pp. A-25 through A-44).

2. The following facts alleged by Petitioner were not before the Court when it entered its summary final judgment:

a. That Petitioner Swinney was an actual candidate for election to the Florida Legislature.

b. That Petitioner Swinney was suspended from his job as a deputy sheriff.

c. That the Escambia County Civil Service Board ordered his dismissal.

3. Although the above facts are discussed in the dissent from the majority opinion of the Supreme Court of Florida (See: Petitioner's Appendix E (Exhibit 5) pp. A-55 through A-69), they were not properly before the Court for consideration.

REASONS FOR DENYING THE WRIT

Merit systems for county government employees are exceptions to the rule in Florida. Most counties do not have civil service systems, but rather retain the spoils system with all of its vicious inequities. Only Hillsborough, Escambia, Pinellas, Dade, Volusia and Bay Counties, and the City of Jacksonville which governs the area of Duval

County, of the 67 counties of Florida, have civil service systems for any group of their public employees.

Politically, the merit system for the employees of Escambia County remains in a very precarious position. At each session of the State Legislature since its original enactment bills have been introduced, most of which have been enacted into law, to amend the system so as to exclude more county employees from the classified service and to reduce the power of the Civil Service Board over personnel policies and practices.

Civil Service in Escambia County has had a turbulent history. The civil service system was originally adopted in 1951. Chapter 27537, Laws of Florida 1951. Prior to 1967 it was amended twenty times, at least once at each regular session of the State Legislature. Chapter 29058, Laws of Florida 1953; Chapter 30737, Laws of Florida 1955; Chapter 30738, Laws of Florida 1955; Chapter 30739, Laws of Florida 1955; Chapter 30741, Laws of Florida 1955; Chapter 30747, Laws of Florida 1955; Chapter 57-1297, Laws of Florida 1957; Chapter 57-1298, Laws of Florida 1957; Chapter 57-1299, Laws of Florida 1957; Chapter 57-1304, Laws of Florida 1957; Chapter 57-1305, Laws of Florida 1957; Chapter 57-1306, Laws of Florida 1957; Chapter 57-1307, Laws of Florida 1957; Chapter 59-1266, Laws of Florida 1959; Chapter 59-1272, Laws of Florida 1959; Chapter 61-2137, Laws of Florida 1961; Chapter 63-1313, Laws of Florida 1963; Chapter 63-1314, Laws of Florida 1963; Chapter 65-1518, Laws of Florida 1965.

In 1967 it was substantially revised and reinacted. Chapter 67-1370, Laws of Florida 1967. It has since been amended four times,

(Chapter 71-628, Laws of Florida 1971; Chapter 72-534, Laws of Florida 1972; Chapter 72-536; Chapter 72-538), at every subsequent regular session of the Legislature, except in 1969 when the Governor took the unprecedented action of vetoing two local bills (Senate Bills 1734 and 1735) which would have substantially reduced the power and independence of the Escambia County Civil Service Board. Our legislative delegation has verbally indicated the intent to again amend the law at the current session of the Legislature.

In 1970 the civil service system had to withstand its most serious attack, an attempt by the elected officials of the county to abolish it by county ordinance, pursuant to a presumed constitutional and statutory grant of "home rule" power. Davis v. Gronemeyer, 251 So. 2d 1 (Fla. 1971).

Quite naturally, the elected officials of the county, who have no tenure in office save that provided by political prowess, object to their lack of absolute control over the hiring, firing and pay of the county employees who work directly under them. They would much prefer that all of their employees support them politically and otherwise. They cannot be expected to accept passively a system which allows a classified employee, who is insulated by civil service status from the harsh realities of politics in his employment, to engage actively in political campaigns which may be antagonistic to the political interests of the elected officials of the county.

Moreover, the political interests of county elective officers are not confined to their own political campaigns. They depend on other local, state and federal elected officers for appropriations and other support

necessary to their political success, who in turn look to them for the "grass roots" support necessary for their success politically.

In contrast, however, with most state and federal elective officers, our county elected officials directly supervise classified employees. The Board of County Commissioners, the Sheriff, the Clerk of the Courts, the County Comptroller, the Tax Collector, the Tax Assessor, the Superintendent of Schools, the District School Board, Circuit Judges and County Judges all hold elective office and directly supervise classified employees under the Escambia County civil service system. A political controversy arising between an employee and his elective supervisor would directly affect the efficiency of government whether or not the employee actively engaged in campaigning during working hours. The Mitchell (infra) decision, at page 95 of 330 U.S. 75, recognized that:

> "The influence of political activity on government employees, if evil in its effect on the service, its employees or people dealing with them, is hardly less so because that activity takes place after hours."

Petitioner acknowledges that one cannot reasonably deny the need to limit some political activities of civil service employees. He alleges, however, that "the more remote [emphasis added] the connection between a particular activity and the performance of official duty, the more difficult it is to justify restriction on the ground that there is a compelling public need to protect the efficiency and integrity of the public service."

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However, the remoteness of supervision of classified employees under civil service by elective office holders is a more appropriate measure of the extent to which government should regulate the political activities of its employees who are protected by civil service.

Section 23, Chapter 67-1370, Laws of Florida 1967, which Petitioner here contends is unconstitutional, is an integral part of the Civil Service Act of Escambia County. It was adopted with substantially its present terms when the Civil Service Act was originally enacted. Section 23, Chapter 27537, Laws of Florida, 1951. It was amended in 1965 to its present form to include the prohibitions against seeking elective public office and serving in any elective or appointive position in any political party. Section 9, Chapter 65-1518, Laws of Florida 1965. It is a portion of the law which makes concessions to the elected officials who have the power, directly or indirectly, to continue or eliminate civil service in Escambia County. A Utah Court once described its workmen's compensation law as "a compromise made between the master and the servant, chaperoned by society, for the benefit of all". United Air Lines Transport Corporation v. Industrial Commission, 151 P. 2d 591 (Utah 1944). The Civil Service Law for Escambia County is analogous.

It may be that civil service for federal employees is so firmly emplanted, generally accepted and remote from elective office that it can survive the elimination of the relevant prohibitions of the Hatch Act. But the merit system for the classified employees of Escambia County has not yet evolved to that position; our politics are not that

sophisticated. If the invalidation of Section 23 would truly result in improving the lot of the public employees in Escambia County, the Civil Service Board would not be here resisting; the probable result, however, would be a total return to the spoils system since only the Legislature of Florida can assure the retention of the merit system for our county.

This Court recognized, in United Public Workers v. Mitchell, 330 U.S. 75, 67 S. Ct. 556, 91 L. Ed. 754, (1946), that practice, history and changing educational, social and economic conditions determine the extent to which governments may regulate the political activities of their employees.

The Legislature of the State of Florida has recognized a need to include the prohibitions of Section 23 in the Civil Service Act for Escambia County. The legislative delegation which represents Escambia County is in the unique position to best know the practice, history and changing educational, social and economic conditions of our county.

The turbulent history of civil service in Escambia County is the best evidence that the elective officials of the county are not yet so remote in the supervision of the classified employees under civil service that we can dispense with the prohibitions of Section 23.

Although our county has grown substantially within the recent past, from a population of 173,829 in 1960 to 205,334 in 1970, our system of local government has not changed as a result of the increased population and metropolitan area growth. On November 3, 1970 the voters of Escambia County rejected

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by a vote of 30,284 to 9,904 a proposed charter government which would have combined and modernized the governments of Escambia County, the City of Pensacola and several other municipalities within the county. Chapter 70-681, Laws of Florida 1970.

Petitioner has cited numerous decisions of this Court, which we acknowledge impose necessary and well reasoned limits upon the infringement of First Amendment rights, holding that the State must demonstrate a compelling interest, and not merely a rational relationship to some colorable state interest, in order to impose limits upon an individual's constitutional rights.

We submit, however, that there is a compelling state need to retain and encourage the enactment of merit systems for local government employees. Unless public employees, who are protected in their employment by these systems, are prohibited from engaging in the activity enjoined by Section 23, our elective representatives will not be encouraged to enact or retain merit systems for local government employees.

The efficient operation of government is maintained only through the employment of individuals who obtain and retain their employment by virtue of a system of merit rather than as a reward for political support.

The Mitchell (Supra) decision is still viable today particularly for local governments in which those who hold elective public office directly supervise public personnel who are protected by civil service systems.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the decisions of the Circuit Court of Escambia County, Florida and of the Supreme Court of Florida in this case are in accord with the decisions of this Court, as recently refined. Therefore, this Court should not review this cause.

Respectfully submitted,

HOBART O. WORLEY, JR., ESQ.
334 Brent Building
Pensacola, Florida 32501
904 - 432-2436
Counsel for Civil Service Board

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AFFIDAVIT OF SERVICE

STATE OF LOUISIANA]

PARISH OF ORLEANS]

Before me, the undersigned authority, this day personally appeared

_____

who being duly sworn on oath deposes and says:

1. I forwarded for filing this date 40 copies of this printed Brief in Opposition to Petition for Writ of Certiorari.

2. I served upon Paul Shimek, Jr., Esquire, 517 North Baylen Street, Pensacola, Florida 32501 and upon R. H. Merritt, Esquire, 105 Lawyers Building, Pensacola, Florida 32501, three copies each of the foregoing Brief in Opposition to Petition for Writ of Certiorari, by depositing the same in a United States post office or mail box, with first class postage prepaid, in accordance with Rule 33, Supreme Court Rules.

3. All parties required to be served have been served.

_____

Affiant

Sworn to and subscribed before me this _____ day of May, 1973.

_____

Notary Public, State of Louisiana

My commission expires: _____

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APPENDIX A
Laws of Florida showing the historical development of the Civil Service Act for Escambia County, Florida (by title only)

APPENDIX B
Stipulation

APPENDIX A

Chapter 27537, Laws of Florida 1951

AN ACT Providing for Civil Service for Specified Employees of Escambia County, Florida, Classifying and Specifying the County Employees to Come Within the Provisions of Said Law; Creating a Civil Service Board to Administer Said Law; Providing for the Appointment, Terms of Office, Authority, Compensation, Qualifications and Duties of the Members of Said Board; Giving Said Board Authority to Promulgate, Adopt and Amend Rules and Regulations for the Administration of Said Law; Providing for Public and Competitive Tests for Purpose of Establishing Employment Lists for Various Positions With Escambia County; Providing for Probationary Periods of Employment With Escambia County; Authorizing Said Board to Adopt and Promulgate Rules and Regulations Governing Practice and Procedure Before Said Board; Providing a Penalty for the Violation of Said Law or the Rules of Said Board; Providing for the Right of a Discharged or Suspended County Employee Coming Within the Provisions of Said Law to Have a Public Hearing as to the Cause of His Discharge; Authorizing Said Board to Make Certain Expenditures and to secure facilities and providing for Payment of Expenses Therefor by County Commissioners of Escambia County; Prohibiting Any Person Under Civil Service as Created by Said Law From Participating in Any Political Activities; Placing Limitations Upon Salaries to be Paid Certain County Employees and Authorizing and Requiring Said Board to Enforce Said Limitations and Requiring That No Decrease of Increase in the Salary or Salaries of Any Individual County Employee or Group of County Employees Shall be Effected Without the Approval of Said Board.

Chapter 29058, Laws of Florida 1953

AN ACT Relating to Civil Service for Employees of Escambia County, Florida; Amending Sections 5, 8, 22 and 24 of Chapter 27537, Laws of Florida, Acts of 1951; Providing for Classification and Specifying the County Employees to come within the Provisions of this Law; Providing for Restoration of Employees to the Civil Service by certain procedure; changing the amount of the appropriation to be made to carry out the provisions of this Law; defining "Appointing Authority".

Chapter 30737, Laws of Florida 1955

AN ACT relating to Civil Service employees of Escambia County; amending Section 17 of Chapter 27537, Special Acts of 1951; by adding a new paragraph at the end of the section, limiting the hours of work of such employees; requiring a certain work schedule of courthouse employees; and providing an effective date.

Chapter 30738, Laws of Florida 1955

AN ACT amending Sections 12 and 22, as amended, of Chapter 27537, Laws of Florida, Acts of 1951, entitled an Act providing for Civil Service for specified employees of Escambia County, Florida; classifying and specifying the county employees to come within the provisions of said law; creating a Civil Service Board to administer said law; providing for the appointment, terms of office, authority, compensation, qualifications and duties of the members of said board; giving said board authority to promulgate, adopt and amend rules and regulations for the

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administration of said law; providing for public and competitive tests for purpose of establishing employment lists for various positions with Escambia County; providing for probationary periods of employment with Escambia County; authorizing said board to adopt and promulgate rules and regulations governing practice and procedure before said board; providing a penalty for the violation of said law or the rules of said board; providing for the right of a discharged or suspended county employee coming within the provisions of said law to have a public hearing as to the cause of his discharge; authorizing said board to make certain expenditures and to secure facilities and providing for payment of expenses therefor by County Commissioners of Escambia County; prohibiting any person under Civil Service as created by said law from participating in any political activities; placing limitations upon salaries to be paid certain county employees and authorizing and requiring said board to enforce said limitations and requiring that no decrease or increase in the salary or salaries of any individual county employee or group of county employees shall be effected without the approval of said board; providing an effective date.

Chapter 30739, Laws of Florida 1955

AN ACT relating to Civil Service Laws of Escambia County; amending Chapter 27537, Laws of Florida, Special Acts of 1951; by adding Section 8 (a) and amending Section 8; providing for sick leave and accumulation of annual leave.

Chapter 30741, Laws of Florida 1955

AN ACT to amend paragraph (g) of Section 3, Chapter 27537, Laws of Florida, 1951, relating to Civil Service for certain specified employees of Escambia County, Florida, by including in unclassified service registered nurses employed by or under the supervision of Escambia County Health Department; fixing an effective date.

Chapter 30747, Laws of Florida 1955

AN ACT relating to the Civil Service Board of Escambia County; amending Section 2, Chapter 27537, Acts of 1951; providing for the Civil Service Board to employ a competent secretary and such other help necessary to carry out the purpose of the Board; providing effective date.

Chapter 57 - 1297, Laws of Florida 1957

AN ACT to amend the last and unlettered paragraph of Section 3, Chapter 27537, Laws of Florida, 1951, relating to civil service for certain specified employees of Escambia County and designating those employees and officers who comprise the classified service thereunder; fixing the effective date.

Chapter 57 - 1298, Laws of Florida 1957

AN ACT relating to the Escambia County Civil Service System; amending Section 22 of Chapter 27537, Acts of 1951, as amended by Chapter 30738, Acts of 1955, relating to the annual appropriations by the County Commissioners therefore; and providing an effective date.

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Chapter 57-1299, Laws of Florida 1957

AN ACT relating to the Escambia County Civil Service Board; amending subsection (b) of Section 4 of Chapter 27537, Acts of 1951, relating to disciplinary actions against employees violating the civil service law or rules and regulations promulgated thereunder; providing an effective date.

Chapter 57-1304, Laws of Florida 1957

AN ACT relating to Escambia County Civil Service employees; amending Section 17 of Chapter 27537, Acts 1951, as amended by Chapter 30737, Acts 1955, relating to hours of work and compensation for overtime work; and providing an effective date.

Chapter 57-1305, Laws of Florida 1957

AN ACT relating to the Escambia County Civil Service employees; amending subsection (g) of Section 3 of Chapter 27537, Acts 1951, relating to classification of certain health department and hospital employees; providing effective date.

Chapter 57-1306, Laws of Florida 1957

AN ACT relating to Escambia County Civil Service employment; amending Section 10 of Chapter 27537, Acts of 1951, relating to employees classified as laborers; and providing an effective date.

Chapter 57-1307, Laws of Florida 1957

AN ACT relating to Escambia County Civil Service employees; Amending Sections 8 and 8 (a) of Chapter 27537, Acts of 1951, as amended by Chapter 30739, Acts of 1955, relating to leaves and holidays; and providing an effective date.

Chapter 59-1266, Laws of Florida 1959

AN ACT amending Chapter 27537, Laws of Florida 1951, as amended by Chapter 57-1305, Laws of Florida 1957, relating to Civil Service for deputy sheriffs and employees of Escambia County, and providing certain exceptions from the classified service in the Sheriff's office; and fixing an effective date.

Chapter 59-1272, Laws of Florida 1959

AN ACT relating to Escambia County Civil Service employees; amending Section 8 of Chapter 27537, Laws of 1951, as amended by Chapters 30739, Laws of 1955, and 57-1307, Laws of 1957; providing an effective date.

Chapter 61-2137, Laws of Florida 1961

AN ACT amending Chapter 27537, Laws of Florida 1951, as amended by Chapter 57-1305, Laws of Florida 1957, relating to Civil Service for deputy sheriffs and employees of Escambia County, and providing certain exceptions from the classified service in the sheriff's office; and fixing an effective date, and referendum.

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Chapter 63-1313, Laws of Florida 1963

AN ACT relating to Escambia County civil service system; amending Section 22, Chapter 27537, Laws of Florida, 1951 as amended by Chapter 29058, 1953; Chapter 30738, 1955; and Chapter 57-1298, all Laws of Florida; relating to the annual appropriation by the county commissioners; providing an effective date.

Chapter 63-1314, Laws of Florida 1963

AN ACT relating to the county civil service of Escambia County; amending Sections 8 and 8 (a) of Chapter 27537, Laws of Florida; 1951, as amended by Chapter 57-1307, Laws of Florida; providing and regulating annual and sick leave; providing an effective date.

Chapter 65-1518, Laws of Florida 1965

AN ACT relating to Escambia county, civil service; amending Section 3 of Chapter 27537, Laws of Florida 1951, by adding subsection (h) thereto to provide classification of certain employees of the county board of public instruction; amending Section 4 (a) of Chapter 27537, Laws of Florida, 1951, relating to rules and regulations, legal effect and publication; amending Section 7 of Chapter 27537, Laws of Florida, 1951, to authorize appointing authorities, upon approval of the appropriating authority involved, to determine the number of employees necessary for their departments; amending Section 8 (a) (1) of Chapter 27537, Laws of Florida, 1951, as amended by Chapter 57-1307, providing for eligibility of certain former employees upon resignation to be placed on re-employment or employment lists; amending Section 9 of

Chapter 27537, Laws of Florida, 1951, providing for various types of employee tests, notice of the taking thereof, and waiver of parts thereof under certain circumstances; amending Section 10 of Chapter 27537, Laws of Florida, 1951, by deleting provisions for labor class, transferring to Section 10 from Section 17 board's present authority to delete certain unreasonable employment classifications; amending section 11 of Chapter 27537, Laws of Florida, 1951, providing for maintenance of separate employment and re-employment lists on temporary, seasonal and full time employment basis; providing effective date of appointments; providing for removal of name from eligibility lists under certain circumstances; amending Section 17 of Chapter 27537, Laws of Florida, 1951, providing for the preparation and adoption of a comprehensive pay plan for all positions in the classification service; providing for adoption of rules and regulations to effectuate such pay plan; prohibiting payment of compensation in excess of amounts specified; providing for rules for initial adjustment of pay scale of certain employees under certain circumstances according to the comprehensive pay plan; limiting additional compensation; amending Section 23 of Chapter 27537, Laws of Florida, 1951, prohibiting employees from participating in certain political activity and from seeking public office; providing an effective date.

Chapter 67-1370, Laws of Florida 1967

AN ACT relating to Escambia county; creating a county civil service system; providing for governing board; providing powers and authorities; requiring board to adopt rules and regulations; providing classification plan and conditions of employment;

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providing for expenditures; providing appropriations by county; providing an effective date.

Chapter 71-628, Laws of Florida 1971

AN ACT relating to Escambia County; amending portions of Chapter 67-1370, Laws of Florida, relating to the civil service board, to include certain job titles under exemptions from the classified service; providing that personnel provisionally appointed due to an insufficient re-employment or employment list be credited five (5) points on subsequent examination for the position held; providing that district school board employees may be reimbursed for one half of their accrued sick leave upon retirement; providing an effective date.

Chapter 72-534, Laws of Florida 1972

AN ACT relating to Escambia County; amending portions of Chapter 67-1370, Laws of Florida, relating to the civil service board; providing a maximum age limit for applicants and a compulsory retirement age for employees; eliminating restrictions on waiver of written tests by the board; providing for student employment; providing the board of county commissioners and district school board a vote in determining general, system-wide salary increases; providing restrictions on the payment of overtime; providing certification of payrolls; providing an effective date.

Chapter 72-536, Laws of Florida 1972

AN ACT relating to Escambia County;

amending portions of Chapter 67-1370, Laws of Florida, relating to civil service board, establishing a procedure for abolishment of positions in the classified service and providing for an appeal by incumbent employees in positions sought to be abolished; providing an effective date.

Chapter 72-538, Laws of Florida 1972

AN ACT relating to Escambia County; amending portions of Chapter 67-1370 and 71-628, Laws of Florida, relating to civil service board, to give the district school board flexibility in its organizational structure to change the title of positions without the necessity of a change in law; providing an effective date.

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY,

STATE OF FLORIDA

Case No. 72-1310

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service employees of Escambia County, Florida,

Plaintiff

vs.

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida, et al,

Defendants.

- -

STIPULATION

The parties to this cause, by and between their undersigned attorneys, hereby stipulate and agree as follows:

1. Final hearing is hereby cancelled because all facts necessary for determination of the issues herein are now before the Court by affidavit or sworn complaint, and this cause is ready for summary final judgment.

2. Oral arguments on plaintiff's motion for summary judgment are waived.

3. All additional briefs must be filed with the Court on or before July 10, 1972.

s/Paul Shimek Jr.
Paul Shimek, Jr.
Attorney for Plaintiff

s/Hobart O. Worley, Jr.
Hobart O. Worley, Jr.
Attorney for Defendant, the Civil Service Board of Escambia County Florida

s/John R. Behr Jr.
for R. H. Merritt
Attorney for Defendant, Royal J. Untreiner, Sheriff of Escambia County, Florida

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FILED
MAY 17 1973
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO. 72-1316

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service Employees of Escambia County, Florida,

Petitioner,

vs.

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM M. CHISOLM, WILLIAM G. CHAMPLIN, I. S. POWELL, J. L. TAYLOR, and TED CIANO, as members of the Civil Service Board of Escambia County, Florida; and CARL H. HARPER, County Solicitor of Escambia County, Florida,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION

ROBERT L. SHEVIN
ATTORNEY GENERAL

SCOTT R. NABORS
ASSISTANT ATTORNEY GENERAL

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO.

JAMES RUSSELL SWINNEY, III, individually and on behalf of a class of persons known as the Civil Service Employees of Escambia County, Florida,

Petitioner,

vs.

ROYAL J. UNTREINER, Sheriff of Escambia County, Florida; WILLIAM M. CHISOLM, WILLIAM G. CHAMPLIN, I. S. POWELL, J. L. TAYLOR, and TED CIANO, as members of the Civil Service Board of Escambia County, Florida; and CARL H. HARPER, County Solicitor of Escambia County, Florida,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The Petitioner for Writ of Certiorari to the Florida Supreme Court seeks review of the Opinion upholding the validity of §23, Chapter 67-1370, Laws of Florida, which is reported as Swinney v. Untreiner,

272 So.2d 805 (Fla. 1973), a copy of which is affixed to Petitioner's Brief as Exhibit 5 of the Appendix (pp. A-55-A-69). The Opinion of the Circuit Court is not reported but may be found in the Petitioner's Brief as Exhibit 3 of the Appendix.

JURISDICTION

Respondents challenge Petitioner's contention that jurisdictional prerequisites under 28 U.S.C. 1257(3) have been satisfied for the reasons set forth in the arguments opposing the Petition for Writ of Certiorari to the Florida Supreme Court.

STATEMENT OF THE CASE

In May, 1972, the Petitioner, James L. Swinney, III, Deputy Sheriff, individually and on behalf of a class of persons including nineteen other Deputy Sheriffs known as the Civil Service Employees of Escambia County, Florida, filed a civil complaint against the Sheriff, County Solicitor, and the Escambia County Civil Service Board, seeking declaratory and injunctive relief to prevent the Respondents from taking any criminal or civil action against the civil service employees for activities prohibited by §23 of Chapter 67-1370, Laws of Florida 1967, the Civil Service Act for Escambia County, Florida. The Petitioner alleged, inter alia, that the prohibitions of §23 were vague, overbroad, and inconsistent with

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the guarantees of equal protection and due process afforded by the First, Fifth, and Fourteenth Amendments to the United States Constitution. The Petitioner attacked express prohibitions found in §23 against seeking elective public office, taking an active part in political campaigns, serving as a member of a political club, seeking signatures and circulating petitions concerning elections, and distributing badges, colors, or indicia favoring or opposing a particular candidate for election.

Attached to the Complaint filed by the Petitioner were twenty affidavits by the civil service employees announcing their desire to participate actively in the Petitioner's or other candidates' campaigns, but for the fear of criminal or civil penalty for violation of §23. If the affiants were, indeed, threatened by criminal prosecution for violation of §23, that threat was eliminated on July 17, 1972, by the trial court's conclusion that §18 of the Escambia County Civil Service Act did not pass federal or state constitutional muster.

At this juncture it should be noted that Petitioner's conclusion, set forth in the Statement of Facts[1], that certain political activities, i.e., serving as a delegate to a political convention, making speeches and preparing resolutions, organizing and addressing political rallies,

[1]See, e.g., pp. 4,5 in the Petition for a Writ of Certiorari to the Florida Supreme Court.

becoming a member of political clubs, wearing badges, publishing, managing or editing partisan newspapers, writing articles or letters to non-partisan newspapers, and organizing or participating in political parades, are included in §23 prohibitions is unfounded. Neither the Florida Supreme Court opinion nor the trial court's order upholding the constitutionality of §23 support such a construction. The unfounded conclusion is erroneous, at least in part, because §23 expressly provides that nothing in the civil service act should be construed to prohibit employees from being members of political clubs or organizations, or from attending political meetings. §23, Chapter 67-1370, Laws of Florida 1967.

On July 19, 1972, the trial court upheld the constitutionality of §23, and thereafter, the Sheriff of Escambia County suspended Petitioner for seeking an elective position in the Florida House of Representatives. Following affirmance of the trial court's order by the Florida Supreme Court on January 22, 1973, the Escambia County Civil Service Board dismissed the Petitioner.

The Petitioner now seeks a Writ of Certiorari to the Florida Supreme Court, contending that §23, Chapter 67-1370 of the Laws of Florida, 1967, violates the First, Fifth and Fourteenth Amendments of the United States Constitution, and effects an unlawful restraint on political freedom within the meaning of Sweezy v. New Hampshire, 354 U.S. 234, 1 L.Ed. 2d 1311, 77 S.Ct. 1203 (1957).

QUESTIONS PRESENTED

I

WHETHER §23, CHAPTER 67-1370, LAWS OF FLORIDA 1967, AN ACT ESTABLISHING THE ESCAMBIA COUNTY CIVIL SERVICE SYSTEM, VIOLATES THE FIRST, FIFTH, AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

II

WHETHER THE ACTIONS OF THE ESCAMBIA COUNTY CIVIL SERVICE BOARD HAVE A CHILLING EFFECT UPON FREEDOM OF SPEECH AND ASSOCIATION AND CONSTITUTE AN UNLAWFUL RESTRAINT UPON POLITICAL FREEDOM WITHIN THE MEANING OF SWEEZY V. NEW HAMPSHIRE, 354 U.S. 234, 1 L.ED. 2D 1311, 77 S.CT. 1203 (1957).

STATUTE INVOLVED

Section 4. Duties.

The duties of the civil service board shall be as follows:

(b) To make investigations concerning the enforcement and effect of this act and any violations thereof; to require and enforce observance of its provisions and of the lawful rules and regulations made thereunder; and to punish by suspension

for not more than thirty (30) days without pay or by dismissal from service any employee found, after due notice and hearing, guilty of any violation of any of the provisions of this act or of any of said rules and regulations or of any lawful order or direction which it may be his duty to comply with or obey.

(c) To hear and determine appeals or complaints respecting the administration of this act.

Section 23. Elective office or political activity.

No person holding an office or place in the classified service under the provisions of this act shall seek elective public office, or serve in any elective or appointive position in any political party, or take an active part in any political campaign, or serve as an officer or a member of a committee of any political club or organization, or circulate or seek signatures to any petition provided for in any primary or election law or act as a worker at the polls, or distribute badges, colors, or indicia favoring or opposing a candidate for election or nomination to a federal, state, county or municipal public office, provided, however, that nothing in this act shall be construed to prohibit or prevent any such officer or employee from becoming or continuing to be a member of a political

club or organization, or from attendance upon political meetings, or from enjoying entire freedom from all interference in casting his vote.

Any person violating the provisions of this section shall be dismissed from the service of the county.

67-1370, Laws of Florida.

ARGUMENT

Petitioner, James Russell Swinney, III, who was dismissed by the Escambia County Civil Service Board for his partisan political activity, and twenty additional civil service employees, challenge the validity of the Escambia County Civil Service Act considered by the Florida Supreme Court in its opinion below. Swinney v. Untreiner, 272 So.2d 805 (Fla. 1973).

The United States Supreme Court heard argument challenging a similar statute in the case of Broadrick v. Oklahoma State Personnel Board, Docket No. 71-1639, reported at 41 U.S.L.W. 3522 (U.S. Apr. 3, 1973). Because the Supreme Court Opinion in Broadrick will settle conflicting opinions among the various lower courts, the Respondents respectfully request that the disposition of the instant cause be stayed until the Supreme Court Opinion in Broadrick, supra, is rendered. If the Petition for Writ of Certiorari be granted, the Respondents request that the cause be

remanded to the Florida Supreme Court for consideration in light of Broadrick, supra. See Henry v. City of Rock Hill, 376 U.S. 776, 12 L.Ed. 2d 79, 84 S.Ct. 1042 (1964); Winkle v. Bannan, 368 U.S. 34; 7 L.Ed. 2d 71; 82 S.Ct. 146 (1961).

Alternatively, the Respondents seek denial of the Petition for Writ of Certiorari for the following reasons.

Despite counsel for Petitioner's attempt to engender a "chilling effect" from a patently constitutional state statute by clouding the facts to which it was applied, the Florida Supreme Court correctly upheld the constitutional validity of §23, prohibiting certain types of political activity by the civil service employees of Escambia County, Florida. Because the Florida Supreme Court's opinion rests on adequate and independent state grounds that are compatible with guarantees of equal protection and due process afforded by the First, Fifth, and Fourteenth Amendments to the United States Constitution, review of the Opinion below should be denied.

The adequate and independent state grounds upon which the opinion below rests consist of the state interest in an orderly, fair and efficient administration of the Escambia County Civil Service Act. §1, Chapter 67-1370, Laws of Florida. The prohibitions against certain political activity found in §23 of the Civil Service Act are intended to protect that interest by limiting conflicts between political

party objectives and governmental departmental needs. United Public Workers of America v. Mitchell, 330 U.S. 75, 91 L.Ed. 754, 67 S.Ct. 556 (1947). By reducing political influence for certain classified employees, the Escambia County Civil Service Board operates on a merit basis, increasing the quality of public service. Moreover, the individual employee is protected from coercion into campaigning and similar political activities both on and off duty that would be a necessary evil without the prohibitions of §23.

Especially where a compelling state interest is involved, such as the fair, efficient administration of the Escambia County Civil Service System, a state court construction of a state statute should prevail, regardless of the co-existence of federal constitutional issues. The state court should be entrusted to achieve a balance between the state interest and possible constitutional infringement, for it was never the United States Supreme Court's purpose to construe state statutes, especially on substantive issues. U. S. v. Thirty Seven (37) Photographs, 402 U.S. 368, 28 L.Ed. 2d 822, 91 S.Ct. 1400, rehearing den., 409 U.S. 924, 29 L.Ed. 2d 702, 91 S.Ct. 2221 (Calif. 1971).

To secure the integrity of the federal system, the Florida Supreme Court's interpretation of the state law challenged by the Petitioner should not be questioned, for Article III of the United States Constitution carefully prescribes the extent of federal question jurisdiction to cases

arising under the Constitution, Statutes, and Treaties of the United States. U. S. CONST. art. III, §2. Although review of the highest state court opinion is provided by 28 U.S.C. 1257(3), where the validity of a state statute is drawn in question on the ground of its being repugnant to the United States Constitution, this jurisdictional statute should be strictly construed to be consistent with Article III, U. S. CONST. art. III, §2.

Although Petitioner couched his petition in terms of the "chilling effect" and other catchwords from Dombrowski v. Pfister, 380 U.S. 479, 14 L.Ed. 2d 22, 85 U.S.Ct. 1116 (1965), Petitioner apparently did not recognize the several reasons why Dombrowski is inapposite here. The divided Dombrowski Court considered the overbreadth doctrine in connection with impending criminal prosecution. In the case at bar, that threat, real or imagined, was eliminated by the trial court's order finding the criminal sanction for violation of §23 unconstitutional. Moreover, the Dombrowski Court did not overturn the requirement of earlier cases that a statute must not only be overbroad on its face, but also vague in its applications to be overturned on constitutional grounds. Since Younger v. Harris, 401 U.S. 37, 27 L.Ed. 2d 669, 91 S.Ct. 746 (1971), has significantly limited the Dombrowski rationale, Petitioner sought relief for himself and his fellow employees through an antiquated legal theory.

In attacking the constitutional validity of §23, Petitioner represents twenty other public employees whose affidavits in the record for review assert their desire to participate in certain political activity,

but for the prohibitions of §23. Despite the attempt to show §23 exerted a "chilling effect," however, the Petitioner has failed to allege essential facts that would demonstrate that the civil service employees have standing to challenge the constitutionality of §23.

Apparently relying on Dombrowski v. Pfister, 380 U.S. 479, 14 L.Ed. 2d 22, 85 S.Ct. 1116 (1965), the affiants asserted in their affidavits that they were "afraid" of prosecution or dismissal for engaging in conduct that was clearly proscribed by §23. However, the affiants do not allege that an investigation to enforce the Civil Service Act had been instigated as provided by §4 (b), or that prosecution or dismissal was likely or even remotely possible for the political activity they had planned.

In Younger v. Harris, 401 U.S. 37, 27 L.Ed. 2d 669, 91 S.Ct. 746 (1967), the Supreme Court considered a similar situation wherein the Defendant Harris challenged a statute for its "chilling effect" on First Amendment rights. Three other Petitioners joined Harris in his challenge, but neither had been indicted, arrested, or threatened with prosecution. Due to the absence of allegations that they would be prosecuted and the lack of "live" controversy, the United States Supreme Court dismissed the three Petitioners who had joined Harris in his cause. To achieve consistent application of the Younger v. Harris rationale, the twenty Petitioners who joined Petitioner Swinney's Complaint should be dismissed and the Writ of

Certiorari considered, if at all, only on behalf of the Petitioner Swinney. Younger v. Harris, supra.

In view of counsel for Petitioner's attempt to engender a "chilling effect" for §23, the fact that the Petitioner and the civil service employees neglected to exhaust their administrative remedies before seeking declaratory or injunctive relief is particularly significant. Such a remedy is provided by §4(c) of Chapter 67-1370 of the Laws of Florida, requiring the civil service board to hear and determine appeals or complaints respecting the administration of the act. The affiants' and Petitioner's neglect should be fatal to a finding that the Petitioner presented a justiciable case or controversy.

In his Petition for Certiorari, the Petitioner critizes the Supreme Court's deference to legislative intent in Mitchell, supra, wherein the Hatch Act, which restricted certain political privileges of federal civil service employees, was challenged. However, the Supreme Court's deference is especially appropriate when personal political privileges are proscribed since such privileges defy statutory definition. Much better than a complex statute specifically delineating countless types of prohibited activity is a general statute in which the underlying intent is evident, enabling a case by case adjudication of proscribed activity.

The Hatch Act construed in Mitchell, supra, dealt with a much more general prohibition against political activity than the

prohibitions in §23. The Hatch Act refers to a backlog of Civil Service Commission rules and regulations in proscribing certain political activities, whereas the Escambia County Civil Service Act contains a clear, concise prohibition of a limited type of political activity.

A comparison of §23 of the Escambia County Civil Service Act, the Hatch Act, and the Oklahoma Civil Service Act now before the court in Broadrick, supra, reveals that the Escambia County Civil Service Act is least restrictive and more precise than either of the two acts presently undergoing constitutional attack before the United States Supreme Court, so that it is properly distinguishable from the constitutional shortcomings, if any, of the Hatch or Oklahoma Act.

In order to protect the state's interest in promoting the fairness and efficiency of the Escambia County Civil Service Board and to avoid political influence to the detriment of efficient civil service in general and of law enforcement in Escambia County in particular, the Respondents strenously oppose the Petitioner's prayer for a Writ of Certiorari.

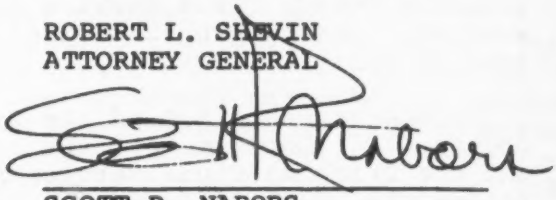
CONCLUSION

It is respectfully requested that the Petition for Writ of Certiorari to the Florida Supreme Court be denied; but if granted, it is suggested that the opinion of the Florida Supreme Court be vacated

and the cause remanded to the Florida Supreme Court for further proceedings.

Respectfully submitted,

ROBERT L. SHEVIN
ATTORNEY GENERAL



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Counsel for Respondents

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222 West Pensacola Street
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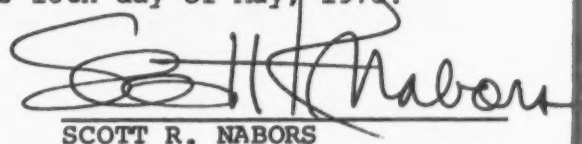
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I forwarded for filing this date forty (40) copies of this printed Brief for Respondents in Opposition with the Clerk, United States Supreme Court, by U.S. Mail and that I served upon Paul Shimek, Jr., Esquire, 517 North Baylen Street, Pensacola, Florida; Hobart O. Worley, Jr., Esquire, 334 Brent Building, Pensacola, Florida 32501; and R. H. Merritt, Esquire, 105 Lawyers Building, 314 South Baylen Street, Pensacola, Florida 32501, three copies each by mailing same to them, first class postage prepaid, in accordance with Rule 33, Supreme Court Rules. I further certify that all parties required to be served have been served on this 16th day of May, 1973.



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